001

The Special Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 16, 1981. The following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland (arriving at 10:50 A.M.); and Ann Day. (Mr. John DiGiulian was absent).

The Chairman opened the meeting at 10:10 A.M. and Mrs. Day led the prayer. Chairman Smith announced that this was a special meeting which had been set up because of the number of pending cases. He informed everyone present that there were only three Board members but the fourth member was expected shortly.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. WADE P. ROPP, appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 1 to 79.5 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6700 Fisher Ave., 40-4((1))47, Dranesville Dist., R-4, 8,519 sq. ft., V-81-D-067. (Deferred from June 9, 1981 for notices).

Mark Abraham, attorney at law, 4900 Leesburg Pike in Alexandria, represented the applicant. Chairman Smith inquired if Mr. Abraham wished to proceed with only three Board members present. Mr. Abraham stated that he was not familiar with the three member situation. Chairman Smith explained that a unanimous vote of three would be necessary to support the variance. Mr. Abraham replied that he was not a gambling man. Chairman Smith advised Mr. Abraham that the Board would proceed with the hearing and if there was a problem it would be deferred.

Mr. Abraham explained the justification for the granting of the variance because of the unusual physical condition of the lots. He informed the Board that this involved six lots but Chairman Smith stated the Board would hear each variance individually. Mr. Abraham stated that the unusual condition was the shape of the property and its unusual location being in close proximity to Rt. 66. Mr. Abraham explained that the land was triangular in shape and was located within the 200 ft. right of way for Rt. 66. In response to questions from the Board, Mr. Abraham stated that Mr. Ropp had owned the land for ten years. Chairman Smith inquired as to how long the subdivision had been there. Mr. Abraham stated that there was an approved preliminary site plan for the subdivision in 1971 which lapsed. Then the 200 ft. right of way came into being which prohibited the construction. Mr. Abraham stated that this variance would not have a detrimental impact on any of the surrounding land as the other land had already been subdivided and the homes were built within the 200 ft. setback. He explained that the problems were not from any result of actions by Mr. Ropp and that the strict enforcement of the Ordinance would deprive the owner of the reasonable use of his land.

Mr. Abraham stated that Sect. 2-414 of the Ordinance was environmental in nature as it dealt with the noise standards. He explained that there were sound barriers being built along Rt. 66. Mr. Abraham stated that he felt it was important that Rt. 66 would not be a major highway like 495 because this section of Rt. 66 would have a prohibition of truck traffic. It would be used for carpools only inside the beltway. He stated that because of the limitations of use, it would reduce the problems to a great extent in his judgement. Mr. Abraham stated that it was his obligation to point out to the BZA that there was a problem with the subdivision at the present time. Basically, the problem was the storm water drainage which would affect some of the residents downstream. Chairman Smith stated that the BZA could not correct that situation but would listen to the problems. He stated that the proper agency to direct the problems to was Public Works.

Mr. Abraham stated that the subdivision involved 11 lots of which 6 lots required a variance. He stated that three lots already had existing houses on them so the subdivision really only involved 8 lots. Mr. Abraham stated that the justification for the granting of the variance was the land was in direct proximity to Rt. 66 and because of the unusual makeup of the parcels combined together. Chairman Smith inquired if there was a house on lot 47 and Mr. Abraham stated that was not. Chairman Smith inquired about the site plan approved in 1971 and whether it was obtained by Mr. Ropp. Mr. Abraham explained that the preliminary site plan was sought by another individual and the plan had lapsed because there was not a street in the state system to serve the lots. Mr. Abraham stated that the street had been completed within the past year and the road was poured. He stated that the sewer laterals were in place.

Mr. Yaremchuk inquired about the elevation of the property and how much higher the land was than the sound barriers. Mr. Abraham stated that the engineer was supposed to speak at the hearing but could not make it. Mr. Abraham stated that basically the elevation was 400 ft. Mr. Yaremchuk stated that if the noise hit the sound barriers and bounced off, there would not be any problem. Mr. Abraham stated that the sound barriers aound 495 were an eyesore. Mr. Yaremchuk inquired as to the price range of the houses to be constructed and Mr. Abraham stated that they would be in the low hundreds. Chairman Smith stated that the sound barriers did have an effect on the contiguous properties. He stated that the noise had an effect of

bouncing off the barrier and spreading the noise. Mr. Yaremchuk stated that the barriers would probably be effective at this location. Chairman Smith inquired as to how long the property had been zoned in this density and Mr. Abraham stated that the property had been reclassified. He stated that the actual use stayed the same. Mr. Abraham stated that it was his understanding that the property had been zoned in this density for at least ten years or longer. Chairman Smith inquired if the applicant owned any other land in the immediate vicinity. Mr. Abraham stated that it was his understanding that Mr. Ropp only owned this parcel.

There was no one else to speak in support of the application. Mr. Donald Daus spoke in opposition. He stated that he lived at the junction of Primrose and Fisher Avenue. He stated that he was opposed to the variance because of drainage problems through the culvert that crossed Fisher Avenue on lot 70. Mr. Daus stated that he disagreed with the statement that the BZA had no concern with drainage. Chairman Smith advised Mr. Daus that this was not the proper place to voice that concern. Mr. Daus stated that the subdivision should have been opposed at the time of the zoning but the environmental were in a much weaker position then to enforce anything. Chairman Smith advised Mr. Daus that the BZA did not zone or downzone property. He stated that the density weas established by the zoning category. Chairman Smith advised Mr. Daus that the only question in this variance was the setback of the houses with respect to the 200 ft. right of way of Rt. 66. Mr. Daus stated that he was providing notice of the problem to the County as the drainage was a real concern. He stated that the July 4th rain was within 3 inches of the top. Mr. Jack White had informed Mr. Daus that with the McLean Meadows subdivision, there was no additional capacity for the drainage. Mr. Daus stated that it would seem that the variance would have an adverse impact on the environment.

Chairman Smith stated that this variance was only a setback matter. He indicated that the environment would have to be addressed by Public Works. Chairman Smith stated that the BZA did not waive any of the environmental factors when granting a variance. The request was only to waive the setback from the interstate highway. Chairman Smith suggested that Mr. Daus follow the subdivision process and at the time of construction, contact Mr. Jack White. He stated that this should alleviate any of the problems that Mr. Daus was concerned about.

The next speaker in opposition was Mr. Charles Andrews of 6636 Fisher Avenue. Mr. Andrews stated that he lived across the street from Mr. Daus. Mr. Andrews stated that there was some misinformation given to the Board as there was not any plan for a sound barrier on this side of Rt. 66 along that stretch. He stated that the top of the bank had already been landscaped. Chairman Smith inquired if the photographs showed a sound barrier. Mr. Yaremchuk inquired if Mr. Andrews had talked with the Highway Department about the barriers. Mr. Andrews replied that he had checked with the citizens information booth and the resident engineer of the Highway Department. Mr. Andrews stated that from all evidence, all of the barriers had been completed in that area and that now the Highway Department was working in the opposite direction. Someone advised the Board that the neighbors had made the Highway Department tear down the barrier and Mrs. Day inquired as to why. Mr. Yaremchuk replied that it was probably like the Berlin Wall. Mrs. Day asked if the barrier had been effective. Chairman Smith stated that the sound barriers were only effective to the contiguous properties to the highway as the barrier pushed the noise up and it spread out and flowed over the area. He stated that it would help the contiguous property owners.

Mr. Yaremchuk stated that there was probably a problem with the barriers aesthetically. However, he stated that there had been a problem with some houses built on Telegraph Road without any sound barriers. Mr. Yaremchuk advised the Board that he was reluctant to support any variance without something to protect the people with that kind of noise factor. He stated that he wanted to be assured that there would be some kind of barrier to control the noise. He stated that if he lived along there with all of that traffic, it would really be a problem. Mr. Yaremchuk stated that some of the houses had been built too close. He indicated that he did not know how far back the houses should be located to eliminate the noise. Chairman Smith stated that the State only required a 75 ft. setback. The 200 ft. setback was a requirement of the County and was never adopted by the State.

Chairman Smith stated that he was concerned with the fact that the road was there and would not be in use at the time the houses were sold so that the noise factors would not be present. Mr. Yaremchuk stated that Rt. 66 was supposed to be completed by the spring of 1982. He stated that he had looked at the property and there was a hardship because of the topographics and the barrier. He stated that if no barrier was going to be constructed, he was not certain that he could support the variance. He stated that because there were not any houses there, the barrier had not been constructed. Chairman Smith stated that he was not prone to support variances. However, the Board had a similar variance request on 495. He stated that it was a matter of whether this was a reasonable use of the land. He indicated that the amendments to the Ordinance and the 200 ft. setback as opposed to the 75 ft. setback were matters to be considered.

Mr. Yaremchuk stated that the applicant had to comply with the County Code. Chairman Smith stated that it was difficult but he was leaning towards the applicant because of the circumstances surrounding the ownership, the length of time of ownership and the amendments to the Ordinance since that time. He stated that the applicant had owned the property for ten years. Mr. Yaremchuk stated that he could no imagine the State not putting up the barriers. Mrs. Day inquired if the State would go back and put up the barriers piecemeal. Chairman Smith stated that it would have to be requested by the homeowners and some of the people did not want it. He stated that the Highway Department was trying to construct in conformity with the nearness of the people in the area. Chairman Smith stated that the fact that the applicant could build a subdivision of 8 houses, that it was only a matter of 3 additional houses. He stated that three of the houses were under application for a variance.

Mr. Yaremchuk inquired if the applicant was going to do any additional soundproofing on the buildings. Mr. Howard Brock, Jr. informed the Board that he was one of the applicants and owned the property on the south side that was continguous to Rt. 66. He stated that he had owned the property for 14 years and had bought the property in 1967. Mr. Brock stated that he had lived on Fisher Avenue for five years. He indicated that it had always been his hope to build a house on one of the vacant lots. Mr. Brock stated that he resided at 6705 Fisher Avenue which was four blocks away. He stated that the subject property had quite a grade and there was an elevation difference. Mr. Yaremchuk inquired about the elevation and Mr. Brock stated that it was about 30 to 40 ft. difference. Mr. Brock stated that he had assumed the Highway Department would bring the barrier all the way through. In response to Mr. Yaremchuk's earlier question about soundproofing, Mr. Brock stated that he would put up some fencing. In addition, he stated that the houses would have extra insulation and storm windows and storm doors which would be energy efficient as well as soundproof. Mr. Brock stated that the federal government had held construction of Rt. 66. He stated that he was willing to live in the area himself which was why he had purchased the property. Mr. Brock stated that commercial trucks and vehicles would be prohibited from using this section of Rt. 66. Therefore, there would be very little traffic noise during the sleeping hours. Mr. Yaremchuk stated that Mr. Brock might be right. He stated that Rt. 66 might just be for carpools at first but the traffic could not be held back forever. Mr. Brock stated that it was his understanding that carpools only would be allowed on Rt. 66 inside the beltway. Chairman Smith stated that he had a question about the legislation of the denial of the truck traffic to use Rt. 66 but he stated that Mr. Brock was correct. The function of that section of Rt. 66 was strictly for commuters.

(At 10:50 A.M., Mr. Hyland arrived at the meeting).

Chairman Smith stated that most people would know that the highway was there when they purchased their property. He stated that the biggest concern was the reasonable use of the land. Chairman Smith stated that the applicant had owned the property for ten years. As far as the environmental factors, he stated that the purchaser would be aware of the situation at the time of purchase. Mr. Yaremchuk stated that it does not always work that way. Chairman Smith briefed Mr. Hyland on the concerns of the citizens with respect to the drainage situation that might be created. He stated that the drainage would be addressed at the time of site review and that construction would not be allowed without the problems being worked out.

Mr. Abraham stated that the justification for the variance was the fact that the parcels came down into a triangular pattern with the base of the triangle next to Rt. 66 which caused a proximity problem.

There was no one else to speak in opposition and the Chairman closed the public hearing.

R E S O L U T I O N

In Application No. V-81-D-067 by WADE P. ROPP under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 1 to 79.5 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6700 Fisher Avenue, tax map reference 40-4((1))47, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

RESOLUTION

004

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 8,519 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being triangular and has exceptional topographic problems and has an unusual condition in that the land sits higher than Rt. 66 and the applicant has owned the property for the past 10 years or more and there is a discrepancy between the setbacks required from interstate highways by the State and the County being a difference of 125 ft.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 4, July 16, 1981, Scheduled case of

10:05 A.M. WADE P. ROPP, appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 2 to 82 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6700 Fisher Avenue, 40-4((1))47, Dranesville Dist., R-4, 8,619 sq. ft., V-81-D-068. (Deferred from June 9, 1981 for notices).

Mr. Mark Abraham, attorney at law, of 4900 Leesburg Pike, Suite 400, Alexandria, Virginia represented the applicant. Mr. Abraham stated that Mr. Ropp had owned the property for at least 10 years. The property had a close proximity to Rt. 66 and the configuration of the combined parcels formed a triangular shape which was a hardship to the applicant.

There was no one else to speak in support of the applicant. Mr. Donald Daus, owner of lot 70, spoke in opposition. He stated that he was concerned about the drainage which he had expressed during the previous variance hearing. Another point which he had not raised earlier was that the variance to the setbacks from the interstate would be a detriment as far as the air pollution, the fumes and the noise. There was no one else to speak in opposition.

RESOLUTION

In Application No. V-81-D-068 by WADE P. ROPP under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 2 to 82 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6700 Fisher Avenue, tax map reference 40-4((1))47, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

RESOLUTION

005

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 8,619 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being triangular and has exceptional topographic problems and has an unusual condition in that the owner had made a similar request 10 years ago but approval lapsed and the Ordinance has changes since that period of time.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 5, July 16, 1981, Scheduled case of

10:10 A.M. WADE P. ROPP, appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 3 to 104 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6700 Fisher Avenue, 40-4((1))47, Dranesville Dist., R-4, 8,739 sq. ft., V-81-D-069. (Deferred from June 9, 1981 for notices).

Mr. Mark Abraham, attorney at law, of 4900 Leesburg Pike, Suite 400, Alexandria, Virginia represented the applicant. Mr. Abraham stated that Mr. Ropp was requesting the variance because of the parcel's close proximity to Rt. 66 and because of the irregular shape of the parce. Mr. Abraham stated that in addition to those aspects, the land was situated uphill from Rt. 66.

There was no one else to speak in support of the application. Mr. Donald Daus stated that he was in opposition to the requested variance for the reasons he had stated in the first variance application, V-81-D-067.

RESOLUTION

In Application No. V-81-D-069 by WADE P. ROPP under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 3 to 104 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6700 Fisher Avenue, tax map reference 40-4((1))47, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

006

RESOLUTION

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 8,739 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being triangular and has exceptional topographic problems and has an unusual condition in the difficulty caused to the applicant due to the change in setback requirements since purchase of the property ten years ago.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 6, July 16, 1981, Scheduled case of

10:15 A.M. WADE P. ROPP, appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 4 to 149 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6700 Fisher Avenue, 40-4((1))47, Dranesville Dist., R-4, 11,182 sq. ft., V-81-D-070. (Deferred from June 9, 1981 for notices).

Mr. Mark Abraham, attorney at law, of 4900 Leesburg Pike, Suite 400, Alexandria, Virginia represented the applicant. Mr. Abraham stated that Mr. Ropp was requesting the variance because of the parcel's close proximity to Rt. 66 and because of the irregular shape of the parce. Mr. Abraham stated that in addition to those aspects, the land was situated uphill from Rt. 66.

There was no one else to speak in support of the application. Mr. Donald Daus stated that he was in opposition to the requested variance for the reasons he had stated in the first variance application, V-81-D-067.

RESOLUTION

In Application No. V-81-D-070 by WADE P. ROPP under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 4 to 149 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6700 Fisher Avenue, tax map reference 40-4((1))47, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

RESOLUTION

007

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 11,182 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being triangular and has exceptional topographic problems and has an unusual condition in that the land sits higher than Rt. 66 and the applicant has owned the property for the past ten years or more there is a discrepancy between the setbacks required from interstate highways by the State and the County being a difference of 125 ft.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 7, July 16, 1981, Scheduled case of

10:20 A.M. HOWARD BROCK & HOWARD BROCK, JR., appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 9 to 121 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6701 & 6705 Fisher Avenue, 40-4((1))46, Dranesville Dist., R-4, 11,200 sq. ft., V-81-D-071. (Deferred from June 9, 1981 for notices).

Mr. Mark Abraham, attorney at law, of 4900 Leesburg Pike, Suite 400, Alexandria, Virginia represented the Brocks. He stated that he was requesting a variance based on the proximity of the lot to Rt. 66. He stated that the Brocks has owned the lot for over 14 years and were requesting the variance because offjthe irregular shape of the parcels. In response to questions from the Board, Mr. Abraham stated that Mr. Howard Brock, Jr. owned the lot in conjunction with his father who had purchased the property in 1971. Mr. Abraham stated that lot 9 was jointly owned. Mr. Hyland inquired as to what extent the lot was irregular in shape. Mr. Abraham responded that the parcel was triangular in shape. Chairman Smith inquired if there was an existing house between this lot and Rt. 66 which was presently occupied. Mr. Abraham stated that on lot 10 was an existing house which Mr. Brock had resided in for five years. At the present time, the propertry was rented. Chairman Smith inquired if Mr. Brock had owned the property at the time the land was taken for the construction of Rt. 66. Mr. Abraham stated that the property had been purchased after the Highway Department acquired the right-of-way in 1960 and 1961. Chairman Smith stated that the fact there was an existing house situated closer to Rt. 66 already was an unusual situation also.

There was no one else to speak in support of the application. Mr. Donald Daus spoke in opposition by referencing his statements made during the hearing of V-81-D-067.

RESOLUTION

In Application No. V-81-D-071 by HOWARD BROCK & HOWARD BROCK, JR., under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 9 to 121 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6701 & 6705 Fisher Avenue, tax map reference 40-4((1))46, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

008

RESOLUTION

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 11,182 sq. ft.
4. That the applicant's property has an unusual condition because of its close proximity to Rt. 66 and has been under the same ownership for 14 years and the lot does have an existing structure on the abutting lot 10 which is closer to Rt. 66 and there has been a hardship on the owner becasue of a recent change in the setback requirements from interstate highways.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 8, July 16, 1981, Scheduled case of

10:25 A.M. HOWARD BROCK, JR., appl. under Sect. 18-401 of the Ord. to allow construction of a house on proposed lot 11 to 30 ft. from I-66 r.o.w. (200 ft. min. distance from interstate highways req. by Sect. 2-414), located 6705 Fisher Avenue, 40-4((1))46, Dranesville Dist., R-4, 12,571 sq. ft., V-81-D-072. (Deferred from June 9, 1981 for notices).

Mr. Mark Abraham, attorney at law, of 4900 Leesburg Pike, Suite 400, Alexandria, Virginia represented the Brocks. He stated that the property was located close to Rt. 66. Mr. Abraham advised the Board the entire parcel was triangular in shape but the individual lot itself was also triangular in shape as it ran along Rt. 66 for a portion of the lot. Mr. Abraham stated that due to the configuration of the lot and its close proximity to Rt. 66, the applicants were requesting a variance.

Chairman Smith advised Mr. Abraham that he had a problem with this particular lot. He stated that the applicants did not even meet the setback of 75 ft. which was required by the State. Chairman Smith stated that apparently there had been approval for a subdivision and now the applicant was trying to obtain two additional lots. Chairman Smith stated that he had a problem with this particular lot being only 30 ft. from the interstate highway. Mr. Brock advised the Board that the house he had lived in was an existing house which was situated between this lot and Rt. 66. He stated that he had lived there for 14 years. Mr. Brock advised the Board that this particular subdivision plan was the same one as originally filed backed in the 60's. Mr. Brock stated that he could put in more landscaping and screening on this particular lot. Chairman Smith stated that he could not support the variance because the applicant had not even met the minimum State requirements.

Mr. Hyland stated that he had been absent earlier in the meeting and missed the discussion regarding the State requirements. He asked the Chairman what the requirement was. Chairman Smith advised Mr. Hyland that the State requirement was 75 ft. Mr. Hyland

inquired as to what authority the BZA had to vary that requirement. Chairman Smith stated that the Board had never varied the 75 ft. setback. Mr. Hyland inquired if the BZA had the authority to do so. Chairman Smith questioned whether the Board did have the authority except in extreme cases of hardship. Chairman Smith stated that the property had been zoned for years under the same density and setback requirements. It had been based on the original zoning.

Mr. Abraham stated that the BZA in September 1979 had granted variances to Maurice Byrd to allow construction of houses along I-95 with insufficient depth to comply with the 200 ft. setback requirement. He stated that Mr. Brock, Jr. owned 1.42 acres. If the variance was not approved, he would only be able to build two more houses. Mr. Abraham stated that at the end of the triangular lot was a significant outlot. If the variance were not approved, over half of the parcel would become an outlot.

There was no one else to speak in support of the request. Mr. Donald Daus spoke in opposition by referencing his comments made during V-81-D-067.

RESOLUTION

In Application No. V-81-D-072 by HOWARD BROCK, JR., under Section 18-401 of the Zoning Ordinance to allow construction of a house on proposed lot 11 to 30 ft. from I-66 r.o.w. (200 ft. minimum distance from interstate highways required by Sect. 2-414) on property located at 6705 Fisher Avenue, tax map reference 40-4((1))47, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 12,571 sq. ft.
4. That the applicant's property is an exceptionally irregular in shape being triangular and has exceptional topographic problems being higher than Rt. 66 and has an usual condition in the difficulty to the applicant due to the change in the setback requirements since ownership.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 10, July 16, 1981, Scheduled case of

10:30 A.M. TRUSTEES OFFRANCONIA ASSEMBLY OF GOD, appl. under Sect. 3-103 of the Ord. to amend S-184-77 for church and related facilities to permit expansion of parking from 54 to 77 spaces, located 7401 Beulah Street, 91-3((1))53, Lee Dist., R-1, 4.1149 ac., S-81-L-040.

010

Mr. Bob Carneal of Alexandria represented the church. He stated that the church wished to expand its parking lot as its congregation had had to park elsewhere at times. Mr. Carneal stated that the church needed parking for more people. The additional parking would aid the elderly and the youth and would be safer than parking off the property.

Chairman Smith inquired if the church planned to ask for a waiver of the 25 ft. transitional screening requirement. Mr. Carneal that it had always been the church's intent to expand the parking lot which was why the building was situated as it was. He stated that in 1979, the church had talked to Oscar Hendrickson to ask for the waiver to have less than the 25 ft. transitional screening on the original parking lot. The church was seeking a waiver on the expansion of the parking lot also. Chairman Smith stated that the church should have gotten the waiver before appearing before the BZA. However, he stated that the Board could condition the variance.

In response to questions from the Board, Mr. Carneal stated that the church had been at this location for two years but the church had been in existence for 30 years. Chairman inquired if the existing parking lot was in conformity and was assured that it had been built according to the site plan.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 10, July 16, 1981 Board of Zoning Appeals
TRUSTEES OF FRANCONIA ASSEMBLY OF GOD

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-L-040 by TRUSTEES OF FRANCONIA ASSEMBLY OF GOD under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-184-77 for church and related facilities to permit expansion of parking from 54 to 77 spaces on property located 7401 Beulah Street, tax map reference 91-3((1))53, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 16, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 4.1149 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in Districts as contained in Section 8-006 of the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of seats shall be 280.
8. The hours of operation shall be normal hours associated with church activities.
9. The number of parking spaces shall be 77.
10. All other conditions of S-184-77 not altered by this resolution shall remain in effect.
11. The approval for additional parking is contingent upon the applicant obtaining a waiver of the 25 ft. transitional screening requirement.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 11, July 16, 1981, Scheduled case of

10:45 A.M. DONNY BROOK DEVELOPMENT COMPANY, appl. under Sect. 18-401 of the Ord. to allow subd. into 2 lots, one of which would have width of 10 ft. (200 ft. min. lot width req. by Sect. 3-E06), located 11111 DeVille Estates Dr., Deville Estates Subd., 27-3((1))21, Centreville Dist., R-E, 5.0857 ac., V-81-D-073. (DEFERRED FROM JUNE 9, 1981 FOR NOTICES AND POSTING).

Mr. Jim DeVille of 11100 DeVille Drive represented the applicant. Mr. DeVille informed the Board that he had a problem with the land and had not been able to sell the land for three years. He stated that he had offered to sell the two acres and hold back the three acres but the contract had fallen through. Mr. DeVille stated that he had advertised the three acres for sale and only two people had been interested in it but had been rejected on the basis that they did not comtemplate a residence in keeping with the size and style of DeVille Estates. Mr. DeVille stated that the estate was part of the subdivision and that the sale hinged on the estate. He stated that he was willing to dedicate 25 ft. along Stuart Mill Road to create the subdivision.

There was no one else to speak in support of the variance. An attorney spoke against it. He represented Mr. Brandon who resided across the street from the proposed subdivision. Mr. Brandon resided at 11101 DeVille Estates Drive, lot 2, and he stated that the proposed pipestem would be adjacent to his property. Mr. Brandon stated that Mr. DeVille owned a five acre irregular lot. He stated that lot 1B would be even more irregular. Mr. Brandon was concerned as to who would maintain the 10 ft. pipestem. Mr. Brandon stated that he had purchased his property four years ago from Mr. DeVille and had been under the impression that the subd. would be a five acre estate area. Mr. Brandon stated that the lots intertwined. Mr. Brandon stated that the property was purchased for a trust for which he was the fiduciary. He stated that the proposed variance would detract from the value of the other lots in the area. Mr. Brandon stated that it was his responsibility to protect the assets of the trust. He stated that the trust had purchased the lot and a home to accommodate a wheelchair had been built for his son which had been addressed by the Virginia Court. Mr. Brandon stated that the home was owned by a trust for his son. He indicated that when the lot was purchased, it was with the understanding that the area would remain a five acre estate area. If the lot were subdivided, the only home that could be built would be put directly across from his son's home. He stated that Mr. DeVille's home was 400 to 500 ft. down at the end of the subdivision. Mr. Brandon felt that the subdivision of the lot in question would devalue the property held in trust. Mr. Hyland inquired if the contract had anything in it pertaining to the five acre estate area and Mr. Brandon stated it did not. Mr. Brandon stated that he was relying on an oral contract with the developer that the property would always be three to five acre estates. He stated there was a lot of common ownership of the 1½ acre lake, lighted tennis courts and the access into the three lots. Mr. Brandon stated that the access road had been upgraded with the trust contributing its share for the upkeep of the road. Mr. Brandon stated that the lots were so intertwined that one owner could not subdivide a lot without seriously devaluing and degrading the ownership rights of the other owners. Mr. Brandon stated that if Mr. Deville put a home on the five acres, he would have no objection. But he objected to the subdivision of the five acres.

Chairman Smith stated that he wanted to clarify the matter of the trust and inquired if there had been any guarantee when the trust was set up that there would not be any further subdivision of the lot. Mr. Hyland inquired if it was connected with any other lot owners. Mr. Brandon informed the Board that the only lot owners at the present time were Mr. DeVille and himself. Mr. Yaremchuk inquired if the 10 ft. pipestem was going to be a driveway and Mr. Brandon stated that he did not know the purpose for it. Chairman Smith stated that the 10 ft. was to satisfy the lot frontage requirement for the lot. Mr. Yaremchuk inquired as to how anyone would get to the lot. Mr. Brandon stated that he assumed someone would have to use the private driveway which was maintained by the three lot owners as there was not any other access that he knew of. Mr. Yaremchuk stated that the lot did not have to have road frontage. Mr. Covington stated that the County Executive could grant a waiver but Mr. Hendrickson had been sending them to him lately. Mr. Covington stated that possibly the County Executive had not been approving the requests. However, Mr. Covington stated that

the matter could be handled administratively. Mr. Covington stated the 10 ft. pipestem was only to satisfy the requirements and indicated that the driveway could be anywhere on the property. Chairman Smith stated that he imagined the County Executive was hesitant to grant the waivers since the BZA was the proper authority to hear such matters.

There was no one else to speak in opposition. During rebuttal, Mr. Jim DeVille informed the Board that he maintained the land around the pond and the tennis court. Mr. DeVille stated that he felt the matter should have been handled administratively. Chairman Smith stated that the County Executive was not bound to grant them and there had to be some justification for the granting of the variance. Mr. DeVille stated that the lot was in a wooded area. He stated that there was not any maintenance problem between the two lots. The County maintained the front of the property along Stuart Mill Road. Chairman Smith questioned whether it was state maintained or County maintained. Mrs. Day stated that the plat indicated it was state road no. 669. Mr. DeVille stated that the people on the 15 acre development would be pooling resources. He stated that so far there had not been a reason for him to make a list of expenses and that everybody participated in the maintenance. Mr. DeVille stated that after he disposed of the property he would be able to figure out the budget. He stated that he had sold the five acre lot for $60,000 with a lake and a road and a shared tennis court in common. He stated that he was just now finishing the road. He stated that he had just spent $8,000 on a fence and $3,000 on lighting. Mr. DeVille stated that it had cost him three times what he thought it would. He had just added a pier to the lake which would improve the value of all of the properties. Mr. DeVille stated that he had a road system going in there which was equal to the state system. Mr. DeVille explained to the Board that he had planned to limit the development to three houses but the economy situation made him change his mind.

Mr. Hyland asked the Board to defer the decision to determine whether an administrative variance could be granted. Chairman Smith stated that the BZA had the authority to grant it. Mr. Yaremchuk inquired as to why the BZA should approve a variance if it was unnecessary. Chairman Smith stated that he did not feel it was proper for the Board to defer the matter. He stated that the Board had handled many requests for road frontage.

At 12:15 P.M., Mr. Yaremchuk moved that the Board recess for lunch to discuss the matter. The Board reconvened at 1:25 P.M. and continued with the case.

Page 12, July 16, 1981 Board of Zoning Appeals
DONNY BROOK DEVELOPMENT COMPANY

R E S O L U T I O N

In Application No. V-81-D-073 by DONNY BROOK DEVELOPMENT COMPANY under Section 18-401 of the Zoning Ordinance toi allow subdivision into 2 lots, one of which would have width of 10 ft. (200 ft. minimum lot width req. by Sect. 3-E06), on property located at 11111 DeVille Estates Drive, tax map reference 27-3((1))21, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981 and deferred from June 9, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 5.0857 acres.
4. That the applicant's property is exceptionally irregular in shape, being narrow.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen months from this date unless this subdivision has been recorded along the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 13, July 16, 1981, Scheduled case of

11:00 A.M. CLIFFORD A. TAYLOR, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that the addition of a shade house & trailer to appellant's plant nursery requires special exception approval by the Board of Supervisors, located 12908 Lee Highway, 55-4((1))2, Springfield Dist., R-1, 4.77 ac., A-81-S-009.

As the required notices were not in order, the appeal was deferred until September 22, 1981 at 10:00 A.M.

//

Page 13, July 16, 1981, Scheduled case of

11:30 A.M. DONALD & PATRICIA TOMAYKO, appl. under Sect. 18-406 of the Ord. to allow carport to remain on side lot line and storage shed to remain 1 ft. from side lot line (7 ft. min. side yard for carport req. by Sects. 3-307 & 2-412; 12 ft. min. side yard for shed req. by Sects. 3-307 & 10-105), located 7602 Elgar St., North Springfield Subd., 71-3((4))(49)7, Annandale Dist., R-3, 11,223 sq. ft., V-81-A-109.

Mr. William J. Ginivan, an attorney located at 320 King Street in Alexandria, represented the applicants. Mr. Ginivan informed the Board that his clients had been taken advantage of and were not familiar with the building conditions. Mr. Tomayko had hired a builder to take care of the building permit. Mr. Ginivan stated that the builder had not obtained a building permit and had not completed the structure to Mr. Tomayko's satisfaction. The contractor was L. W. Drew. Mr. Covington informed the BZA that legal action had been taken against the contractor. Chairman Smith inquired if there was any requirement for the builder to obtain the building permit and Mr. Ginivan responded that it had been an oral agreement. He stated that the builder had used a standard constract form which indicated that he would secure people to do the roofing, carpentry, etc. Chairman Smith inquired if the contractor was licensed and was informed he did not have a home improvement license. Mrs. Day inquired as to how far along the structure was completed and Mr. Tomayko stated that it was about 60% complete. Mrs. Day inquired if the carport was to be enclosed and was informed it would not be enclosed. In response to further questions from the Board, Mr. Tomayko stated that he had owned the property for 21 years. Chairman Smith inquired if Mr. Tomayko was familiar with the fact that he needed a building permit. Mr. Tomayko stated that he was familiar with the requirement as he had added a room onto the back of his home but the contractor had taken care of the building permit. Chairman Smith inquired if Mr. Tomayko had been concerned about the lack of a building permit. Mr. Tomayko stated that after the structure was started, he began to see less and less of the contractor until finally he did not show up all. Mr. Tomayko stated that Mr. Drew had brought in a friend to finish the work. Mr. Tomayko stated that he had acted in good faith and that Mr. Drew had been highly recommended to him. Mr. Tomayko stated that he had paid him to take care of everything. Chairman Smith stated that there was nothing in the contract about obtaining a building permit. Chairman Smith advised Mr. Tomayko that the responsibility for obtaining permits was his even though he had delegated the work by an agreement. Mr. Tomayko stated that he had finally concluded that the building permit should have been his responsibility all along.

Chairman Smith inquired as to when Mr. Tomayko had become aware that Mr. Drew did not have a home improvement license. Mr. Tomayko stated that he had become aware of it after both contractors left the job with his money. He stated that he had called the County and talked to the Office of Licensing and found out that Mr. Drew did not have a license. At that time, the County took Mr. Drew to criminal court where he was convicted. Mr. Tomayko stated that nothing was done to the man who came to assist Mr. Drew. Mr. Hyland inquired if Mr. Tomayko had testified against Mr. Drew in the proceedings and Mr. Tomayko stated that he had been a witness but was not required to testify. Mr. Lentini from the County had testified. Mrs. Day inquired if Mr. Tomayko had contacted anyone else about how to correct the situation. Mr. Tomayko stated that he had talked to other contractors about the job. He stated that because of the inflation, it was going to cost him almost as much to finish the job as he had put into it originally. Mrs. Day inquired if Mr. Tomayko could modify his plans and he stated he could not.

During the summary of the case, Mr. Ginivan stated that Mr. Tomayko was seeking permission to complete construction and make it pleasant for the neighbors. Chairman Smith stated that

D14

Mr. Tomayko was going to have to conform to the regulations. Mr. Ginivan stated that Mr. Tomayko had contacted a contractor recommended by Mr. Lentini to was going to take care of all of the paperwork. Mr. Ginivan advised the Board that the neighbors did not find the structure offensive. The nieghbors who abutted the structure did not object to it. Mrs. Day inquired as to how the BZA would know whether the structure met the Code requirements and Chairman Smith advised conditioning the granting on meeting the building code requirements. He stated that Mr. Tomayko would not have to get a building permit if the variance were not granted. Mr. Yaremchuk stated that it could not stand there and that Mr. Tomayko would have to meet the Code requirements or tear the structure down. Chairman Smith stated that if the Board granted the variance without the condition, it could remain where it was. Mr. Tomayko stated that he did not intend to do that. Chairman Smith advised the Board that the matter was up to them but he informed the Board that he could not support the variance unless a condition was put on the variance.

R E S O L U T I O N

In Application No. V-81-A-109 by DONALD & PATRICIA TOMAYKO under Section 18-406 of the Zoning Ordinance to allow carport to remain on side lot line & storage shed to remain 1 ft. from side lot line (7 ft. minimum side yard for carport req. by Sects. 3-307 & 2-412; 12 ft. minimum side yard for shed req. by Sects. 3-307 & 10-105), on property located at 7602 Elgar Street, tax map reference 71-3((4))(49)7, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 11,323 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing uncompleted buildings on the subject property. The construction in error caused a hardship to the applicant and this approval is contigent upon said construction meeting the County and State Building Code requirements.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 14, July 16, 1981, Scheduled case of

11:40 A.M. ARTHUR NELSON III & ROBERT F. DYER, appl. under Sect. 18-401 of the Ord. to allow resubdivision of two lots changing common property line such that corner lot 1 would have a reduction in lot width from 182 ft. to 150 ft. (175 ft. min. lot width req. by Sect. 3-106), located 7521 & 7525 Evans Ford Rd., Lee's Mill Subd., 85-2((3))1 & 2, Springfield Dist., R-1, 3.5042 ac., V-81-S-108.

Mr. Robert Dyer of 7525 Evans Ford Road in Clifton informed the Board that his co-applicant was Mr. Arthur Nelson who could not be present at the hearing. He stated that Mr. Nelson owned lot 1 and he owned lot 2. Mr. Dyer stated that because of the location of the septic fields, the property lines had been drawn in an unusual manner. Effectively, he indicated that his next door neighbor owned his front yard. Mr. Dyer stated that his neighbor and he had mutually agreed to the advancement of the one property line. Mr. Dyer stated that they were trading an equal amount of land. Mr. Dyer stated that photographs had been submitted with his application.

In response to questions from the Board, Mr. Dyer stated that Mr. Nelson owned lot A-1. Chairman Smith inquired as to the justification for the hardship. Mr. Dyer stated that at the present time, his driveway made a 90° turn into his carport. He stated that he could not back out of his driveway. In addition, he stated that he could not even put in a circular drive because he did not own the land in front of his house. Mrs. Day inquired as to why the lots were developed in this manner and Chairman Smith stated that it was apparently done in order to meet the frontage requirements. Chairman Smith stated that the applicants were seeking a variance on an existing conforming lot. Mr. Dyer stated that both he and his neighbor did not have maximum utilization of their properties. He stated that the variance would not affect anyone else but them.

Chairman Smith stated that this was a unique situation and he had never seen a situation like it before. Chairman Smith stated that there were two conforming lots and the applicants proposed to make one lot non-conforming in order to accommodate a driveway which would make it more convenient to access. Chairman Smith stated that there was not any justification for the variance as there was not any hardship. Mr. Dyer inquired if the Chairman had examined the photographs. Mr. Dyer stated that he did not see how the reduction from 182 ft. to 150 ft. would incur any hardship on the neighbors. Mr. Covington advised the Board that if it had not been for the easement, the lot would met the lot width requirements. Mr. Dyer advised the BZA that it had taken two weeks for the County staff to determine whether or not it was a corner lot to begin with. Chairman Smith inquired if there was a house directly across the street from the easement. Mr. Dyer stated that there was a house and it was the Hammon residence who did not object to the variance. Chairman Smith inquired as to why this was considered a corner lot. Mr. Covington advised the Board that it was considered a corner lot because the easement served more than one lot at the rear. Chairman Smith stated that it was a proper interpretation.

Mr. Yaremchuk stated that in theory, lot 1 was a corner lot. However, he stated that the Ordinance could not provide for every situation and things happened. Mr. Yaremchuk stated that the BZA had to be part of the real world. Chairman Smith stated that it was a corner lot if it served the people at the rear. Mr. Yaremchuk stated that a cow path served hundreds of people also.

There was no one else to speak in support and no one to speak in opposition.

Page 15, July 16, 1981 Board of Zoning Appeals
ARTHUR NELSON III & ROBERT DYER

RESOLUTION

In Application No. V-81-S-108 by ARTHUR NELSON III & ROBERT F. DYER under Section 18-401 of the Zoning Ordinance to allow resubdivision of two lots changing common property line such that corner lot 1 would have a reduction in lot width from 182 ft. to 150 ft. (175 ft. minimum lot width required by Sect. 3-106), on property located at 7521 & 7525 Evans Ford Road, tax map reference 85-2((3))1 & 2, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.5042 acres.
4. That the applicants have agreed to a resubdivision to exchange land and that the lot 1-A is considered to be a corner lot which caused the applicants a hardship on a portion of the property.

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

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

RESOLUTION

016

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 16, July 16, 1981, Scheduled case of

11:50 A.M. THOMAS K. GANDEE, appl. under Sect. 18-401 of the Ord. to allow construction of addition to building such that the total building will be 31.2 ft. front & 10 ft. from rear lot lines (40 ft. min. front & 20 ft. min. rear yard req. by Sect. 4-607) located 4216 Annandale Rd., 71-1((4))21 & pt. of 18, 19 & 20, Mason Dist., C-6, 14,135 sq. ft., V-81-M-112.

Mr. Thomas Gandee of 6902 Huntsman Blvd. in Springfield informed the Board that the justification for the request was the irregular configuration of the property which formed a pie-shape triangle which would not allow any addition to the existing structure without running into a problem with the Ordinance. Mr. Gandee stated that he was requesting a 10 ft. setback from the rear and a 31 ft. setback from the front of the property. Chairman Smith inquired as to what the existing building was being used for and Mr. Gandee responded it had been a real estate office. He stated that it was unoccupied at the present time. Mr. Gandee stated that he had purchased the property four months ago. Chairman Smith inquired if Mr. Gandee was aware of the problems at the time he had purchased it. Mr. Gandee stated he had been aware that the existing building was already in conflict because of the shape of the lot. He stated that front and the back did not conform. Mr. Gandee stated that he wanted to put an addition on the back of the structure and needed to go 10 ft. instead of 20 ft. in order to have enough space for the structure. Mr. Covington advised the Board that the building did not meet the front yard setbacks because of the road.

Mrs. Day inquired as to where the building was located on Annandale Road. Mr. Gandee stated that they were 2 to 3 blocks north of Rt. 236 and were behind the bowling alley. Chairman Smith stated that the applicant had purchased the property knowing that all of the conditions existed. He stated that the property had been that way for a long time and had been serving commercial uses. Mr. Gandee stated that he had checked into the situation and determined that the BZA would understand the circumstances. Mr. Gandee stated that he did not have any flexibility. Originally, the building had been a two story brick home which was converted into a real estate office. Mr. Gandee stated that the building had been used for offices for the past ten or twelve years. Mrs. Day inquired as to what use Mr. Gandee planned to put the addition to and was informed that he wanted to operate a business out of that section. He informed her that he had a service organization called service masters which did home and office cleaning. Mrs. Day inquired as to why he needed another building. Mr. Gandee stated that he needed an additional means of moving some of the products. He stated that the only entrance was through the front door. Mrs. Day inquired if Mr. Gandee was going to have any extra trucks there. He stated that he would not have any extra and there would be less traffic with his business than the real estate office had. Mr. Gandee stated that he had five employees. He stated that there would be a time in the morning when no more than ten vehicle trips would come and go. Chairman Smith inquired as to the number of vans and was informed Mr. Gandee had three vans. Chairman Smith inquired if this was contract cleaning and Mr. Gandee stated that the business was the same as a normal maid program but he indicated that he did have clients he saw once a month.

RESOLUTION

In Application No. V-81-M-112 by THOMAS K. GANDEE under Section 18-401 of the Zoning Ordinance to allow construction of addition to building such that the total building will be 31.2 ft. from front and 10 ft. from rear lot lines (40 ft. minimum front & 20 ft. min. rear yard required by Sect. 4-607) on property located at 4216 Annandale Road, tax map reference 71-1((4))21 & pt. 18, 19 & 20, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

R E S O L U T I O N

017

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 16, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-6.
3. The area of the lot is 14,135 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in that the front yard has been reduced by previous road widening.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 17, July 16, 1981, Scheduled case of

12:00 NOON — DANIEL LEWIS LESTER, appl. under Sect. 18-401 of the Ord. to allow construction of a detached garage 5 ft. from side lot line (20 ft. min. side yard req. by Sects. 3-107 & 10-105), located 8219 Lorton Rd., Earl H. Curtis Subd., 107-3((2))5A, Lee Dist., R-1, 0.5 ac., V-81-L-097.

Mr. Daniel Lester of 8219 Lorton Road stated that he had applied for a variance to construct a two car garage 5 ft. from the property line. He stated that the original garage had been on the property before the house was built. Mr. Lester stated that it was almost impossible to back into the garage. He stated that he wanted to build a new garage which would match the house. Mr. Lester stated that the only place he could build it was on the other side of the property because of the septic field. He stated that the old garage could not be fixed up because it did not have any foundation and it was too short for his pickup truck. In response to questions from the Board, Mr. Lester stated that he had owned the property for nine years. Mrs. Day examined the photographs and inquired if the garage in the picture was the one behind his house. Mr. Lester stated that the garage Mrs. Day was referring to belonged to his neighbor. Mr. Lester stated that the garage he wanted to build would be even with the neighbor's garage. Mrs. Day stated that the new garage would be nice for the neighbors as it would be better than the old one. Mr. Lester stated that his wife's grandparents had owned the land around them. The garage had been built in the 30's.

R E S O L U T I O N

In Application No. V-81-L-097 by DANIEL LEWIS LESTER under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage to 5 ft. from side lot line (20 ft. minimum side yard required by Sects. 3-107 & 10-105) on property located at 8219 Lorton Road, tax map reference 107-3((2))5A, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1981; and

RESOLUTION

018

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 0.5 acres.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition being a substandard lot in lot area and lot width and the location of the septic field causes a hardship to the applicant as he cannot utilize the rear yard in a reasonable manner.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extenstion shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 18, July 16, 1981, Scheduled case of

12:15 P.M. CARL RICHARD BOEHLERT, appl. under Sect. 18-401 of the Ord. to allow subdivision into 10 lots, with proposed lots 3, 4, 5 & 6 having width of 6 ft. & proposed lots 7 & 9 having width of 9 ft. (70 ft. min. lot width req. by Sect. 3-407), located 2310 & 2320 Great Falls St., 40-4((1))17A & 19, Dranesville Dist., R-4, 2.5087 ac., V-81-D-044. (DEFERRED FROM MAY 5, 1981 & JUNE 16, 1981 FOR FULL BOARD.)

Chairman Smith stated that the Board still had a problem with a full Board and suggested that the applicant seek another deferral. The variance was deferred until July 30, 1981 at 12:45 P.M.

// There being no further business, the Board adjourned at 2:30 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on 3-8-83

Daniel Smith
DANIEL SMITH, CHAIRMAN

APPROVED: March 15, 1983

D19

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, July 21, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 8:10 P.M. led with a prayer by Mrs. Day.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. EKOJI BUDDHIST TEMPLE, appl. under Sect. 6-303 of the Ord. to permit temple meeting room, located 8134 Old Keene Mill Rd., Cardinal Forest Subd., 79-4((11))1-6, Springfield Dist., PRC, 0.8124 ac., S-81-S-041.

Mr. Frederick R. Taylor of 8402 Old Keene Mill Road represented the applicant. He stated that the proposed use would be located on the first floor of an office suite. When the site plan for the building was originally submitted to the County, attention had been drawn to the single family dwellings. Screening consisting of a stand of trees were provided. Mr. Taylor stated that the hours of operation for the temple would be those hours that the office building would not be use, primarily Sundays. Mr. Taylor stated that more than sufficient parking was provided as Mr. Carey owned the large office building next door also. The building next door housed the Harvester Presbyterian Church. Mr. Taylor stated that he was offering that information to the BZA to indicate that the site could be used as a place of worship. Mr. Taylor stated that a temple at this location would be welcomed by the Buddhist community.

In response to questions from the Board about the square footage, Mr. Taylor stated that the temple would occupy one-half of the first floor which was approximately 2,000 sq. ft. Mr. Taylor informed the Board that the office building had been developed under a condo ownership and the entire suite was 2,000 sq. ft. Mr. Taylor explained that a corporation owned the building at this point but would sell it to MTI which was part of the temple. Chairman Smith stated that the staff report indicated Frederick R. Taylor as owner of the property. Mr. Taylor stated that he had been the Trustee but had sold the property to MTI and that the property had already been deeded. Mr. Covington stated that the transfer had shown up on the computer yet. Mr. Yaremchuk inquired as to the number of years the applicant was seeking approval for and Mr. Taylor stated that the applicant was planning to use the temple for an indefinite period of time. Mr. Taylor stated that this was a commercial area.

There was no one else to speak in support of the application and no one to speak in opposition.

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-S-041 by EKJOI BUDDHIST TEMPLE under Section 6-303 of the Fairfax County Zoning Ordinance to permit temple meeting room on property located at 8134 Old Keene Mill Road, tax map reference 79-4((11))1-6, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 21, 1981; and

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

1. That the applicant is the owner of the property.
2. That the present zoning is PRC.
3. That the area of the lot is 0.8124 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

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

RESOLUTION

020

2. This special permit shall expire eighteen months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to expiration. A request for an extension shall be filed in writing thirty (30) days befpre the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum seating capacity shall be 97.
8. The hours of operation shall be normal church activities hours.
9. The number of parking spaces shall be 32.
10. The temple shall be confined to the 2,000 sq. ft. as shown on the site plan.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 5 to 0.

Page 20, July 21, 1981, Scheduled case of

8:15 P.M. R. RAY RAINWATER & RAINWATER CONCRETE CO., INC., appl. under Sect. 18-401 of the Ord. to appeal Zoning Administrator's decision that deposition and processing of non-composted sewage sludge on appellant's property is not a non-conforming use; that such use constitutes a "solid waste disposal and treatment facility", a category 2 Special Exception Use; and that such use is not permitted in the R-1 District, located 9917 Richmond Highway, 113-2((1))57, 58, 59 & 42, Mt. Vernon Dist., R-1, 124 ac., A-81-V-006. (RECESSED FROM JUNE 23, 1981 FOR ADDITIONAL WRITTEN TESTIMONY AND DECISION.)

Chairman Smith stated that the Board had received quite a bit of written information on the appeal and inquired if any of the Board members wanted to discuss any of it prior to making a decision. As there was not any discussion, Chairman Smith closed the public hearing.

Mr. DiGiulian stated that the Board had a letter dated January 16, 1976 from the Health Department stating that the deposition of sludge under proper and controlled conditions was a permitted operation. In addition, the BZA had a letter dated November 1976 from the then County Executive, Robert W. Wilson, stating that this was a permitted operation. Mr. DiGiulian stated that he could not find that the operation dealt with sewage disposal. Accordingly, he moved that the BZA overturn the ruling of the Zoning Administrator in this case. Mr. Yaremchuk seconded the motion. Mr. Yaremchuk stated that he had read th staff report very thoroughly and the use was permitted under Group 2 of the Old Ordinance back in 1975 or 1976. The Zoning Administrator had stated that the applicant could not be considered non-conforming because he did not have a special permit. Mr. Yaremchuk stated that if a special permit had been necessary, it was incumbent upon the County to notify Mr. Rainwater of that fact. Mr. Yaremchuk stated that every inspector knew what was going on in his district. Mr. Yaremchuk stated that he felt this was a non-conforming use and it had been going on for many years. He stated that he could not see the justification of the Zoning Administrator.

Chairman Smith stated that he had also read the staff report. He stated that this was a landfill and not a sanitary landfill. Chairman Smith agreed that the use had been going on for four or five years but he supported the Zoning Adminstrator.

Chairman Smith called for a vote on Mr. DiGiulian's motion and it failed by a vote of 2 to 3 (Messrs. Smith, Hyland & Mrs. Day).

Mrs. Day then moved that the BZA uphold the decision of the Zoning Administrator. Mr. Hyland seconded the motion and it passed by a vote of 3 to 2 (Messrs. DiGiulian & Yaremchuk).

//

Page 21, July 21, 1981, Scheduled case of

8:30 P.M. BETCO BLOCK & PRODUCTS, INC. appl. under Sect. 18-401 of the Ord. to allow construction of industrial bldg. 50 ft. of the nearest point from I-95 r.o.w. (75 ft. min. distance for industrial bldgs. from interstate highways r.o.w. req. by Sect. 2-414), located 9422-9426 Gunston Cove Rd., 107-4((1))66, 67 & 68, Lee Dist., I-6, 7.29135 ac., V-81-L-114.

021

Mr. Peter Hoyt, President of Betco Block & Products, Inc., of 1038 Carolyn Street in Great Falls informed the Board that there were two hardships involved with the application. Mr. Hoyt stated that the company manufactured block and distributed building materials. He stated that they needed to build a small plant and move their main facility from Bethesda to this facility. In terms of a hardship, it was necessary for them to move the building as far back as possible in order to gain yard storage out front and to be able to join with future uses. Mr. Hoyt stated that there was an elevated knoll which would make it much easier to convey their raw materilas into the silos and bins. Mr. Hoyt explained to the Board that the company was in the process of being granted a change in zoning and dedication of a 20 ft. strip of land along the front and eventually to widen the road. Because of the dedication, it had cut down on the company's storage space.

In response to questions from the Board, Mr. Hoyt stated that the property was located next to I-95 but because of the knoll, there would not be any sight exposure. Mrs. Day inquired about the trees and Mr. Hoyt stated that they would leave as many trees as they possibly could. Mrs. Day inquired if the company planned to use the railroad siding and Mr. Hoyt stated that there was not one immediately accessible. Chairman Smith inquired as to why the applicant did not move the building down and meet the setback requiremlents and use the setback area for storage. Mr. Hoyt stated that it would take too much of his storage space. He stated that there were not any neighbors to the west or south. The neighbor to the north was a used auto parts operation. Chairman Smith inquired if there were any other buildings in the 75 ft. strip and Mr. Hoyt stated there were not.

There was no one else to speak in support and no one to speak in opposition.

Page 21, July 21, 1981 Board of Zoning Appeals
BETCO BLOCK & PRODUCTS, INC.

R E S O L U T I O N

In Application No. V-81-L-114 by BETCO BLOCK & PRODUCTS, INC. under Section 18-401 of the Zoning Ordinance to allow construction of industrial buildings 50 ft. of the nearest point from I-95 r.o.w. (75 ft. minimum distance for industrial buildings from interstate highways r.o.w. required by Sect. 2-414) on property located at 9422-9426 Gunston Cove Road, tax map reference 107-4((1))66, 67 & 68, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt th following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 21, 11981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is I-6.
3. The area of the lot is 7.29135 acres.
4. That the applicant's property is exceptionally irregular in shape in that it is bounded on two sides by streets and a railroad.

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

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

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

1. This approval is granted for the location and the specific structures indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 22, July 21, 1981, Recess

At 8:40 P.M., the Board recessed the meeting and reconvened at 8:50 P.M. to continue the scheduled agenda.

//

Page 22, July 21, 1981, Scheduled case of:

8:45 P.M. ESTATE OF CHARLENE B. OLIVER, appl. under Sect. 18-401 of the Ord. to allow subd. into 4 lots, with proposed lots 3 and 4 each having width of 6 ft. (80 ft. min. lot width req. by Sect. 3-306), located 4011 Gallows Rd., 60-3((1))18, Mason Dist., R-3, 1.5423 ac., V-81-V-087. (DEFERRED FROM JUNE 23, 1981 AT REQUEST OF CITIZENS.)

Mr. John Hanson, an attorney located at 7297-D Lee Highway in Falls Church, represented the applicant. He stated that he was seeking a variance due to the unusual shape of the property. The lot was 187 ft. wide and 415 ft. deep. Mr. Hanson stated that the property fronted on Gallows Road but a variance to the footage requirement for an entrance was required. In response to questions from the Board, Mr. Hanson stated that the property was under contract with a contigency that the property be subdivided into 4 lots and that the variance be granted. Chairman Smith inquired if the owner of the property had formerly developed the land around this parcel and was informed that this parcel was the old farm place. The owners had subdivided the original land sometime back.

There was no one else to speak in support of the application. Mr. Fred Welz of 4004 Patricia Street stated that he owned the property adjacent to the Oliver property. He thanked the Board for scheduling the hearing at a night meeting as it allowed all of the opposition to attend the hearing. Mr. Welz stated that there were 20 deeply concerned residents and the citizens of Broyhill Crest had identified major issues and analyzed the merits of the application. He stated that it was their consensus that in the best interest of the property owners, the BZA should deny the variance. Mr. Welz stated that the file should contain opposition from the citizens of Broyhill Crest and the Supervisor of Mason District. Mr. Welz stated that they had consolidated the issues into five major points and each resident would present an issue.

Ms. Emily Shimm of 3919 Howard Street stated that she resided next to the Oliver property. She stated that poor drainage had always been a problem in this area. There was a 25 ft. drop from the Oliver property at the crest of the hill down to Patricia & Howard Streets. which was approximately 250 ft. in distance. Ms. Shimm stated that this was quite a steep hill and during rainstorms, heavy runoff occurred. Ms. Shimm explained that the soil was hard, red clay and had a fast runoff. Large pools of water accummulated and water seeped into basements in the area. Ms. Shimm stated that there were trees on the Oliver property which helped in the runoff and erosion control as well as adding aesthetic value to the community. The proposed development of three new homes would threaten the trees and destroy the root base causing them to die within a year or two according to the citizens' beliefs. Mr. Yaremchuk inquired as to the topography of the 8 lots in the subdivision and Ms. Shimm replied that the grade was pretty pronounced dropping off 20 ft. on both sides of the subject property.

The next speaker in opposition was Mr. Brooks of 4008 Patricia Street who addressed the problem of a potential traffic hazard. He thanked the Board for delaying the hearing as he had been away on military duty. Mr. Brooks stated that there were three streets involved: Patricia Street, Howard Street and Travis Parkway. He stated that three driveways could cause a major traffic problem in the area. He stated that traffic on Gallows Road was often blinded at sunrise and at sunset. According to Mr. Brooks, a traffic hazard would be created if two additional driveways were added to Gallows Road. In the eight lots on Patricia Street, there were 14 children. Mr. Brooks was concerned about the additional traffic because of the bus stops and vehicular motion around the children.

Mr. Hyland inquired of Mr. Brooks as to what he proposed be done with the subject property. He stated that the applicants wished to divide the lot into four lots and Mr. Hyland believed they had the right to do that. If there were only divided into two lots, presumably there would still be driveways at the same location on Gallows Road. Mr. Hyland asked what significant impact two more driveways would make. He asked how much more traffic two houses

with driveways could create. Mr. Brooks stated that it was a question of visibility. There was a crest at this location on Gallows Road and people would not be able to see up or down Gallows Road. Mr. Hyland stated that the condition was already existing. Mr. Brooks stated that the creation of three more driveways would make the situation three times worse. Mr. Yaremchuk informed Mr. Brooks that the creation of the driveways would require approval from the Highway Department and Subdivision Control. He stated that the driveways would not be approved if there was a problem.

The next speaker was Mrs. Peggy Ross of 3925 Howard Street whose property abutted directly on lot 1 of the proposed subdivision. Mrs. Ross stated that her property would be most vulnerable to the new development. Mrs. Ross stated that her remarks related to the siting of the three new homes. The lots were unusual according to Mrs. Ross as they had strange configurations with pipestem arrangements. Technically, the density requirements of the three lots were met for the R-3 zone. Mrs. Ross was concerned about the siting of the new homes on the lots because of the restrictive space available. She informed the Board that because of the terrain, a number of homes on Patricia and Howard Street had been built towards the back of the lots. She stated that with all of the conditions, a situation of siting the homes would result in a pattern of closeness or density similar to a cluster development. Mrs. Ross stated that she strongly opposed the variance request.

The next speaker was Mr. Robert Lyon of the Executive Committee of Broyhill Crest, 7305 Beverly Manor Drive in Annandale. He spoke on concerns of the community in general. Mr. Lyon stated that the Executive Committee strongly supported the neighbors who opposed the variance. He stated that the committee was concerned about the pipestem development in its community. Mr. Lyon stated that pipestem were homes without normal frontage on a public street which detracted from the appearance of the neighborhood. Mr. Lyon stated that pipestems were an afterthought and were very tapered lots. According to the community's beliefs the pipestems were contrary to the wisdom shown by the drafter of the Zoning Ordinance which required certain frontages. In addition, he stated that pipestem development was contrary to the character of the neighborhood. Mr. Lyon stated that pipestem created a lot of maintenance problems as well as the crowding of the area. They disrupted the environment. Mr. Lyon pointed out that the subject property had a large frontage and could be developed without any variance.

In summary, Mr. Weltz stated that the current configuration of the Oliver property had resulted from a gradual subdivision over the past 25 years. He stated that the citizens respected the rights of the applicant and their desire to sell the property. However, Mr. Weltz stated that enforcement of the Ordinance would not deprive them of their rights. Equally important was that enforcement would provide for upholding the rights of the citizens also and he urged the Board to deny the variance.

Mr. Robert Beers, Administrative Assistant to Supervisor Davis, also spoke in opposition. He stated that Supervisor Davis had communicated his sentiments to the BZA and supported the citizens. Mr. Beers informed the BZA that Supervisor Davis' office had not received any letters in support of the requested variance but had received many letters in opposition.

During rebuttal, Mr. Hanson stated lot 1 was buildable. Lots 3 & 4 would each have almost 19,000 sq. ft. and could accommodate their own drainage. In addition, he stated that the subdivision would come under Subdivision Control. With respect to traffic, only two more lots would have driveways as the applicant had limited it purposedly because of the hill. As far as closeness, the lots would conform to the side yard setbacks. Mr. Hyland inquired as to the amount of land in the original Oliver estate that had been subdivided over the years. Mrs. Day stated it had been 98 acres. Mrs. Oliver asked the Board to allow her to speak so the truth could be told. She stated that the houses on each side were built on the hill. The drainage was not from the Oliver estate but from Patricia Street. Mrs. Oliver stated that the estate had gentle flat ground. Mrs. Oliver stated that there were not that many trees on the estate as the property had been a dairy farm.

There was no one else to speak in opposition or in rebuttal. Chairman Smith closed the public hearing.

R E S O L U T I O N

In Application No. V-81-M-087 by ESTATE OF CHARLENE B. OLIVER under Section 18-401 of the Zoning Ordinance to allow subdivision into 4 lots, with proposed lots 3 & 4 each having width of 6 ft. (80 ft. minimum lot width required by Sects. 3-306), on property located at 4011 Gallows Road, tax map reference 60-3((1))18, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

024

RESOLUTION

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 21, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 1.5423 acres.

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

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

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

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 2 (Messrs. DiGiulian and Yaremchuk).

// There being no further business, the Board adjourned at 9:20 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

DANIEL SMITH, CHAIRMAN

APPROVED: March 29, 1983

Submitted to the Board on March 25, 1983

025

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, July 28, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:30 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. HERBERT L. GOODWIN, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's determination that three (3) trailers on appellant's property are not accessory uses as defined by the Ord. and are therefore not permitted in this R-1 District, located 3832 Barney Rd., Fairwood Estates Subd., 33-2((2))19, Centreville Dist., R-1, 23.2 ac., A-81-C-008.

Mr. Yates, Zoning Administrator, informed the Board that the appeal concerned his decision that three trailers located on the subject's property were not permitted accessory uses to an agricultural use and were not permitted as a principal use for the R-1 District and had to be removed from the property. Mr. Yates stated that William Shoup, the Zoning Inspector, was also present to answer any questions the Board had. Mr. Hyland stated that one of the suggestions made by the applicant was that there was a substantial amount of farm equipment and accessories being stored on the property which the applicant indicated had been utilized in connection with agricultural uses on other farms away from this property. Mr. Hyland stated that in terms of an agricultural activity on the subject property, the only indication he had seen in the file was a suggestion that there was a 4,000 sq. ft. of land that apparently served as a garden growing corn and other vegetables. Mr. Hyland inquired if that was the only activity that the Zoning Inspector could find there. Mr. Yates stated that was correct. Mr. Hyland stated that there had been a suggestion that 20 acres of the land had been plowed and he inquired if the Zoning Inspector had seen the plowed acreage. Mr. Hyland stated that Mr. Goodwin's statement indicated that 10 to 12 acres had been plowed and turfed but had been unnoticed by the Zoning Inspector. In addition, Mr. Goodwin stated that the cutting of timber had also been unnoticed by the Zoning Inspector. Mr. Shoup informed the Board that the plowing of land might have taken place a long while before his inspection. He stated that on his inspection, he had not seen any recently plowed land and that all he had seen was pasture. Mr. Hyland stated that Mr. Goodwin's statement referred to a 45,000 sq. ft. garden in lieu of the 4,000 sq. ft. in the staff report. Mr. Hyland inquired if any measurement had been taken. Mr. Shoup replied that he had estimated the area of garden to be 4,000 sq. ft. He stated that Mr. Goodwin may have been referring to the area that he had established and cultivated with grass to provide a pasture. Mr. Hyland inquired if the garden area had been walked off or just eyeballed and Mr. Shoup stated that he had eyeballed it. Mr. Hyland inquired if it was correct that the inspector had only examined two of the trailers and not the third and Mr. Shoup stated that was correct.

Chairman Smith inquired if there were permits for any of the trailers and Mr. Shoup stated there was not. Chairman Smith inquired if there was a permit for a living area on the property and Mr. Shoup stated that there was not one to his knowledge. Mr. Shoup stated that there was an indication that the Shasta travel trailer was being occupied. Chairman Smith inquired as to the first time the violation was observed and was informed it was in June of 1980.

As Mr. Goodwin was deaf, he had an interpreter present his argument to the Board and translate for him in sign language. Mr. Hyland inquired of Mr. Goodwin as to the size of the garden area and he stated that it was one acre or approximately 45,000 sq. ft. Mr. Hyland asked what was done with the vegetables. Mr. Goodwin stated that he and his wife ate a lot of the vegetables and they sold the surplus. Mr. Hyland asked where the vegetables were sold and Mr. Goodwin stated that he sold them mostly to friends. Mr. Hyland inquired as to what type of general equipment was stored in the sheds. Mr. Goodwin stated that the sheds contained diesel fuel and machine parts for the general maintenance of the equipment. Chairman Smith inquired as to why the trailer was on the property and what it was used for. Mr. Goodwin stated that the travel trailer was used for rest purposes from the work. Mr. Goodwin stated that sometimes they cooked snacks during the day while they were working. Chairman Smith inquired if the trailer was parked there and Mr. Goodwin stated that he would explain that later during his presentation. Mr. Goodwin presented a slide presentation showing the view from the closest property owner. He pointed out the screening provided. In addition, Mr. Goodwin showed the Board the 10 to 12 acre field that had been plowed and prepared for seeding. Mr. Goodwin stated that it had been prepared two years ago and was becoming quite a good pasture. Mr. Goodwin stated that the land was for sale but it was difficult as the land did not perc. Mr. Hyland inquired if there was a contract for sale of the property or a prospective purchaser. Mr. Goodwin stated that some parties were interested in the land and a sports club was still working on some plans to buy the property but there was not any definite contracts. Mr. Hyland inquired if Mr. Goodwin would still own some of the land after the sale and Mr. Goodwin stated that all of the land was up for sale. Mr. Hyland inquired that if Mr. Goodwin did not sell the land, what were his intentions as far as the agricultural uses and did he intend to live on the property. Mr. Goodwin replied that if he could get the zoning approval to build, he would stay on the property and build a home. If not, he might close the property and move closer to his

026

children in central Virginia. Mr. Hyland inquired if the same one acre of ground shown in the slides had been the one acre of land tilled in 1980. Mr. Goodwin stated that the slide picture was taken two weeks ago and that the one acre in the slide was a new garden from the year before. Mr. Hyland inquired about the garden in 1980. Mr. Goodwin responded that in 1980, he had about the same amount of space tilled for a garden. He stated that he had used the vegetables for his personal use and sold the rest to friends. Mr. Goodwin informed the Board that in 1980, he had filed a federal income tax form reporting the sale of wood & vegetables and that it had been a very small amount. Mr. Hyland inquired if a farm return had been filed and Mr. Goodwin stated that he had filed one. Mr. Hyland inquired if any expenses had been taken for the plowing and seeding of the 10 to 12 acre field that had been prepared. Mr. Goodwin stated that he had and that he had been filing tax papers for 30 years. Mr. Goodwin stated that he had been filing a farm return since 1977 or 1978 but he did not have the papers with him.

Mr. Hyland inquired as to where Mr. Goodwin presently resided. Mr. Goodwin stated that he resided with his son in Manassas and very often stayed with his daughter in Frederick or with other son in Louisa County. Mr. Goodwin stated that when he was very busy, he sometimes camped on his property for a night. He stated that he was on the property all during the day. Mr. Hyland inquired if the Shasta trailer could be moved from one location to another and Mr. Goodwin stated that it could. Mr. Hyland inquired if Mr. Goodwin did move it and he stated that he did not. Mr. Goodwin reported that the trailer had never been pulled since he moved it to the property two or three years ago. Mr. Hyland inquired if Mr. Goodwin had ever stayed overnight in the Shasta and he stated he had. Mr. Goodwin stated that whenever he and his wife were too tired to drive home, they stayed in the trailer for a night. Mr. Hyland inquired as to how often that occurred. Mr. Goodwin stated that it might occur frequently during a two week stretch and sometimes they would not stay at all. Mr. Goodwin stated that it depended on how busy they were. He stated that they were always there during the day for the entire year trying to take care of their property. Mr. Hyland inquired as to the address used on the federal income tax form and Mr. Goodwin stated it was P. O. Box 143, Chantilly, Virginia. Mr. Hyland inquired if all of the equipment stored in the shed consisting of four tractors, etc. were used to till the one acre of ground. Mr. Goodwin responded that all of the equipment was used except for one large corn picker and a hay baler. Mr. Goodwin stated that he used the four tractors with about ten other implements. Mr. Hyland inquired if all the equipment was used on the one acre of ground and Mr. Goodwin responded that it was really used on the farm. Mr. Goodwin stated that he had used the big tractor to plow the one acre but he used the other machinery in the woods and on the farm.

Chairman Smith inquired as to how much time Mr. Goodwin had spent living in the trailer in the since July 1980. Mr. Goodwin stated that since he went to the property every day, he used the trailer and everything on the land every day or most every day. Chairman Smith inquired if Mr. Goodwin stayed in the trailer for two week periods. Mr. Goodwin stated that he did not but he also stated that most of the time, he used everything on the property during the day and then left the property at night to go to Manassas. He stated that sometimes he did not leave until late at night and often came back very early in the morning. Chairman Smith stated that Mr. Goodwin apparently spent most of his time there and he stated that he was there during the day. Chairman Smith inquired if Mr. Goodwin sold tractor parts or acted as an agent or dealer for tractor parts since he kept such a high inventory of them. Mr. Goodwin stated that he sometimes sold old machinery that he did not need any longer. He informed the Board that all of his machines were used for 15 to 20 years before he sold them. He also stated that he believed in having parts available when needed. He stated that some of the parts he had purchased two or three years ago so he could service his vehicles himself. Chairman Smith inquired where else the equipment was used other than the one acre in Fairfax County. Mr. Goodwin stated that last year and this year, he had not used the equipment in any place other than Fairfax County as he was too old to do large contract work for other people. He stated that he really only used the machinery on his own farm.

Mrs. Day stated that in the staff report, it indicated that there was an office type trailer which contained some furniture. She inquired as to the type of furniture and asked when the beekeeping equipment had been used. Mr. Goodwin stated that he would explain about that later. Chairman Smith Smith inquired about the perculation of the property. He asked how many times Mr. Goodwin had tried to perc the property. Mr. Goodwin responded that he had a permit in 1953 but that times had changed. The permit granted in 1953 was no longer good. He stated that he could not get another permit because Fairfax County had changed its rules and was more strict than before. Mr. Goodwin stated that his only way to get a permit would be to put in a sewer line. Chairman Smith inquired as to the number of times Mr. Goodwin had attempted to pass perc. Mr. Goodwin stated that the sanitary engineer had been to the property the summer before and had tried three different locations. Mr. Goodwin stated that was the last time he had tried to pass perc as all three locations failed. Chairman Smith stated that three attempts on 23 acres of land was not much of an attempt. Mr. Goodwin stated that the test had been performed on a four or five acre parcel. The rest of the land was floodplain.

027

Mr. Goodwin informed the Board that the storage of cedar posts on his property was for construction of fence posts that he was planning to build. He stated that he had about 300 to 400 poles which he had cut from trees he had removed from an area on the property. Mr. Hyland inquired as to the purpose of the poles and Mr. Goodwin stated that he needed them for fence posts. Mr. Hyland inquired as to what purpose the fence would serve and Mr. Goodwin responded that he wanted to have a milk cow, beef yearlings and general stock on his farm for the future when he would stay there.

Mr. Goodwin stated that many other places around Fairfax County used the same type of buildings as he did. He showed the Board slides of about ten places which he stated were within 1½ to 2 miles of his property, all using trailers similar to the ones he had on his property. Mr. Goodwin assured the Board that these locations were all in Fairfax County but he would not give the exact locations as he did not wish to complain about them. Chairman Smith stated that the trailers could be in Loundon County and asked for the exact locations. Mr. Goodwin stated that he did not know the exact location but only the general location. Chairman Smith stated that was not sufficient. Mr. Hyland stated that it would be helpful to know the locations and asked that the applicant provide the information as best he could. Mr. Goodwin stated that one area was on Lee Road next to the National Motor Home Manufacturers Association. Another was on Lee Road near Cubb Run. Chairman Smith inquired as to the size of the farm and was informed by Mr. Goodwin it was about 100 acres. Another trailer was on a construction site on Crestwood for homes being built on Braddock Road near the Chantilly Golf Course. Mr. Goodwin stated that another trailer was on Braddock Road a little past the exit off of Rt. 66 going towards Chantilly. He stated that it was the same type of construction as he had on his property. Mr. Goodwin showed another slide of a trailer located in Chantilly. Chairman Smith stated that it was an industrial area. Mr. Goodwin stated that parts of the buildings had been pre-fabricated trailers. He stated that the people may have permits for them but the structures looked no different than his. Mr. Goodwin showed the Board another slide of a two acre parcel on Willard Road and Thompson Lane. Chairman Smith stated that temporary uses were allowed by right by a permit. Mr. Goodwin stated that he had seen many more sheds and trailers

During questioning from the Board, Mr. Hyland asked if Mr. Goodwin had ever engaged in the sale of tractor parts on the property. Mr. Goodwin responded that he had made a market study a few year back to see if there was a demand for the tractor parts. He stated that he had advertised in the Washington Star but found out very quickly that the economy was too poor. Mr. Goodwin stated that he then decided to wait until he got a zoning change so that he could take another look at it in the future. He stated that he might resume that after looking into the demand if he ever got a zoning change or if he ever moved to another area. Chairman Smith inquired as to the parts which were contained in cartons in the trailers. Mr. Goodwin stated that he had a saw mill, edger machiner, a planer and a molder. He stated that he wanted to cut the lumber from his property in the future and sell it. He stated that he would sell both rough and finished wood in the future. Chairman Smith inquired if Mr. Goodwin had sold any wood in the past. Mr. Goodwin stated that he had never sold any of the wood but used it for his personal use.

Chairman Smith inquired if there was anyone else who wished to speak regarding the appeal. Ms. Natalie Rinehart of 3812 Barne Road informed the Board that she owned the lot right next door to Mr. Goodwin. On the slide presentation, Mr. Goodwin had showed a picture of a trailer she had on her property. Ms. Rinehart informed the Board that it was a horse trailer and was tagged. Another slide of her property had shown some posts. Ms. Rinehart stated that was the training area for the horses. Ms. Rinehart stated that she understood about the appeal. Ms. Rinehart stated that as long as she had lived next door, Mr. Goodwin had been living in the Shasta trailer. He had cleared the land. She stated that the large section for pasture had been cleared for a long time with no attempt to fence it for a pasture. Mrs. Rinehart informed the Board that Mr. Goodwin was over on the property all the time, day and night. She stated that she fed her animals late at night and knew that Mr. Goodwin was living in the trailer. She stated that she did not see anything that he was doing on the property which could be considered agricultural. She stated that the wood piles had been on the property for a long time.

Mr. Hyland inquired of Ms. Rinehart as to what portion of the property was tilled and planted in vegetables. Ms. Rinehart stated that in back of the trailer was where the garden was located but it was not in her view. The only way to determine the size would be to go onto his property. Mr. Hyland inquired if Mr. Goodwin sold vegetables and Ms. Rinehart stated that she had never seen him sell any. Ms. Rinehart stated that last year she was able to see Mr. Goodwin's garden. She stated that the majority of the garden had been lost because of the heat and not enough water and the fact that he was not able to take care of it. She stated that what he grew was more for himself and his family. Mr. Hyland inquired as to the number of times in the course of a week that Mr. Goodwin would stay overnight at the property. Ms. Rinehart stated that to her, it looked like Mr. Goodwin stayed everynight. She stated that no matter how late at night she went to check on the horses, she would see lights on in the trailer and see Mr. Goodwin's car. In addition, no matter how early she got up, she would see Mr. Goodwin next door.

028

Mr. Goodwin showed the Board the slides of his property and asked that they notice the heavy screening between his property and Mrs. Rinehart's property. He asked how Mrs. Rinehart could tell who was on the property. He stated that sometimes his wife left and he stayed on the property. In addition, he informed the Board that he had two different watchmen and they took turns with him to stay on the property, all leaving at different times. He asked how Mrs. Rinehart could determine whether it was him or the two watchmen. Chairman Smith stated that he believed Ms. Rinehart had indicated that she could not tell for certain other than that there was movement on the property and there was someone there. Mr. Hyland stated that Ms. Rinehart had testified that she had seen the appellant early in the morning. Chairman Smith inquired if Ms. Rinehart was able to see the premises well enough. Ms. Rinehart stated that she was not able to see the back of the property but was able to see the roadway up to the trailer and up to Murdock Street as it was all open area. She stated that she could not see in back of the trailers. Mr. Goodwin inquired as to the number of times Ms. Rinehart had seen him come in and go out. Ms. Rinehart stated that she had seen him leave five, six or ten times but indicated that she did not count. She stated that she always saw the Goodwins on the property every day.

Mr. Yaremchuk stated that the Board had spent two hours on the appeal and hoped that it did not continue to go back and forth. During rebuttal, Mr. Goodwin stated that there was really no way that anyone could prove he was living there because of all the trees surrounding the property. He stated that Ms. Rinehart's house was too far away for her to hear the car coming and going unless she just sat and watched for it all the time. Mr. Goodwin stated that he was on the property every day. He stated that there were three people coming and going who watched the property and looked after it. Mr. Goodwin stated that he and his wife had been absent from the property sometime back and when they returned, they had discovered that the Rinehart family had set up "squatters' privileges on almost ten acres of his land which adjoined their property. Mr. Goodwin stated that no cordial or conceivable effort could resolve any of the differences and it had taken six years to move them from his land. Mr. Goodwin went on to explain the dispute over the boundary but Chairman Smith interrupted him as the information was not relevant to the appeal with respect to the trailers. Mr. Goodwin argued that was the reason the appeal was before the Board.

During rebuttal, Mr. Yates stated that the Board could see that there was an honest disagreement which had been going on for a period of time. Mr. Yates stated that he stood by the position taken that the only way the structures and equipment could be allowed was an accessory use to an agricultural use. Mr. Yates stated that despite his urban upbringing, he was not convinced that the amount of equipment stored there was needed for the area being used. Mr. Yates stated that according to Mr. Shoup, there could be an excess of 4,000 sq. ft. plowed but his statement had been based on the area which was plowed and planted. In conclusion, Mr. Yates drew the Board's attention to the definition of accessory uses as defined in the Ordinance.

Chairman Smith closed the public hearing. Mr. DiGiulian stated that from the testimony he had heard, he did not feel that he could make a determination of the situation. Therefore, he moved that the Board view the structure to determine whether it was used in an agricultural manner. Mr. Yaremchuk seconded the motion. By a vote of 4 to 1 (Mr. Smith), it was the concensus of the Board to defer the matter for decision only until August 4, 1981 with the Board scheduled to view the property on Thursday, July 30, 1981.

//

Page 28, July 28, 1981, Scheduled case of

10:40 A.M. GEZA CSERI, appl. under Sect. 18-401 of the Ord. to allow subd. into two (2) lots with proposed lot 2 having width of 12 ft. (200 ft. min. lot width req. by Sect. 3-E06), located 839 Towlston Rd., 20-1((1))48A, Dranesville Dist., R-E, 5.652 acres, V-81-D-101.

The Board was in receipt of a request from the applicant for a deferral of the variance application. The matter was deferred until September 15, 1981 at 10:40 A.M.

//

Page 28, July 28, 1981, Scheduled case of

10:50 A.M. ANASTASIOS PELEKIDIS & OTHERS, appl. under Sect. 18-401 of the Ord. to allow construction of building 31 ft. from front lot line & 14 ft. from rear lot line (40 ft. min. front yard and 20 ft. min. rear yard req. by Sect. 4-807), located 7308 - 7320 Little River Turnpike, 71-1((4))1-7, Annandale Dist., C-8, 22,412 sq. ft., V-81-A-103.

Mr. Thomas Faduhl, an attorney in Fairfax, represented Mr. Pelekidis and Mr. Samaha. Mr. Samaha was an architect with the firm of Strang & Dunham. Mr. Faduhl stated that the applicants were seeking a variance of 9 ft. on the front setback and a 6 ft. variance on the back setback. He stated that the variance was due to three factors, one of which was shallowness or narrowness of the lot. Mr. Faduhl stated that the depth of the lot was only

140 ft. Because of the shallowness of the lot, the applicants were concerned as it created an unusual circumstance or condition for the lot which did not apply to any other lot in the area. Mr. Faduhl stated that the variance would improve the conditions as there was a building currently set at 22.1 ft. Mr. Faduhl stated that the reasonable use of the property would be increased with the variance as well as improving the current setback line. Mr. Faduhl stated that the applicants proposed to eliminate the parking spaces that were adjacent to Rt. 236. The reason was because it was potentially dangerous for the drivers to have to reverse into Rt. 236. Landscaping would be provided in lieu of the parking in the front.

Mr. Faduhl stated that the building would be new which would add to the attractiveness of the community. It would be parallel to the adjoining building which was a hardware store. Another advantage to the variance was the aesthetic appeal of the two buildings being side by side. As far as safety, Mr. Faduhl stated that the safety would be increased on the property by eliminating the potentially dangerous parking spaces in the front. The parking would be replaced with landscaping.

Mr. Faduhl stated that if the variance was not allowed, the landowners would be deprived of the reasonable use of the land and the proposed building. Mr. Faduhl stated that the granting of the variance was necessary for the reasonable use of the land. Mr. Faduhl stated that an important point to take into consideration was the relationship of the land to the other buildings in the neighborhood. Because of the positioning of the hardware building, Mr. Faduhl stated that they were not asking for anything that had not already been confirmed in the renovation of the hardware store building.

Mr. Faduhl stated that all ten neighbors had been notified of the variance. He restated that a 9 ft. variance to the front and a 6.5 ft. variance to the rear was required in order to gain reasonable use of the land. Mr. Faduhl stated that there was another new building in the area which was not shown on any of the maps and which housed a plant shop. Mr. Faduhl stated that the construction of the new building would improve the community.

In response to questions from the Board, Mr. Faduhl stated that the owners had purchased the property four years ago. Chairman Smith inquired as to what the building was intended to be used for and he was informed it would be retail space. Chairman Smith inquired if it would be used for a single retail use or several retail uses. Mr. Faduhl stated that it would have four to five retail stores within it. Chairman Smith inquired if the parking was adequate to accommodate the different retail stores. Mr. Covington informed the Board that five parking spaces were req. for the first 1,000 sq. ft. of space and six parking spaces were required for every additional 1,000 sq. ft. of space. Chairman Smith stated that the building was 80' x 36' and according to the plat, there was enough parking spaces.

Mr. DiGiulian inquired as to who owned the 10 ft. alley behind the subject property. Mr. Samaha, the architect, informed the Board that it was difficult to establish ownership of the alley. He stated that their building would have 20 ft. from the centerline of the alley. The loading zone was only a proposal. Mr. DiGiulian inquired if the applicant claimed ownership to the alley and Mr. Samaha responded that he did not. Mr. DiGiulian inquired if the County would permit the applicant to have loading spaces in the alley. Mr. Samaha stated that they would have to have the alley vacated and split ownership. Mr. DiGiulian noted that if the County required the applicant to put the loading spaces entirely on his own property, he would lose parking spaces.

In response to further questions from the Board, Mr. Samaha stated that five retail stores were currently on the site consisting of a plant store, a shoe repair store, a tailor, a barbor shop and an upholstery shop. He stated that once the new building was constructed, there would be a maximum of four retail stores. He stated that one business could easily take up that space as the total square footage of the new building would be 28,080 which was not much according to Mr. Samaha. Mr. Hyland stated that if there were five existing stores and four would be provided in the new building, he did not feel there would be enough parking to support the eight businesses. Fourteen spaces were shown on the plat but Chairman Smith stated that the parking should be at least 29 spaces to accommodate the eight businesses. Mr. Samaha stated that nothing was definite regarding the future tenants. He stated that the upholstery was interested in the entire building but negotiations had not been conducted.

Mr. Yaremchuk stated that small businesses had a time in getting anything approved. He stated that the applicant met the Ordinance as far as parking or the site plan would not have been approved. Chairman Smith stated that he was concerned bout granting a variance for a building larger than allowed by right and the justification for it. He stated that the entire tract was under the same ownership and there was an existing four or five businesses presently using the structure. Now the applicant was requesting a variance in order to have another business. Chairman Smith asked what the hardship was. Mr. Covington stated that the parking situation would be better than what was there presently. Chairman Smith stated that he did not question the parking arrangement but was concerned about the justification for the larger building. Mr. Covington stated that it was a shallow lot.

030

Mr. DiGiulian stated that he did not have a problem with the frontage situation as the building next door was even closer to the front than allowed. Chairman Smith stated that the hardship existed prior to the present ownership of the property.

There was no one else to speak in support of the application and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-A-103 by ANASTASIOS PELEKIDIS & OTHERS under Section 18-401 of the Zoning Ordinance to allow construction of building 31 ft. from front lot line & 14 ft. from rear lot line (40 ft. minimum front yard and 20 ft. minimum rear yard required by Sect. 4-807) on property located at 73-8 - 7320 Little River Turnpike, tax map reference 71-1((4)) 1-7, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-8.
3. The area of the lot is 22.412 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including shallow and has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 30, July 28, 1981, Recess: The board recessed for lunch & returned to hear:

11:00 A.M. MR. & MRS. LES POMEROY, appl. under Sect. 18-401 of the Ord. to allow construction of 21 ft. high detached garage with attic 4 ft. from the rear & side lot lines (21 ft. min. rear yard & 12 ft. min. side yard req. by Sects. 3-307 & 10-105), located 7009 Raleigh Rd., Broyhill Crest Subd., 60-4((2))270, Mason Dist., R-3, 10,500 sq. ft., V-81-M-105.

Mr. Barydukas, an architect located at 2103 N. Lincoln Street in Arlington, represented the Pomeroys. He stated that the applicants wished permission to construct a garage closer to the property line than allowed. The property was too shallow to allow construction and conform to the required setbacks. Chairman Smith inquired as to why the building was so large. Mr. Barydukas stated that the Pomeroys had four automobiles which they restored. Some of the automobiles were antiques and some were presently in use. Chairman Smith asked why a second floor was necessary to the garage. Mr. Barydukas explained that the second floor was more for the appearance of the structure due to the slope of the land. He stated that he felt it would be nicer to the neighbors if the building was built more in the normal range. Mr. Barydukas explained that due to the slope of the land, the roof of the building

would hit the ground. He stated that the second floor would be used as a workshop. Mrs. Day inquired if the workshop would be used to restore cars and was informed it would be a handyman's shop that anyone would have in their basement. Mrs. Day inquired if the Pomeroys had a basement and Mr. Barydukas stated that their home was a two story structure without a basement. Mrs. Day inquired as to the structure in the back and was informed it was a screened porch. She asked if there was anywhere else on the property on which to construct a workshop. Mr. Barydukas stated that the workshop came as a result of the design of the structure and that there had not been an intent to create a workshop. Mrs. Day stated that the garage structure gave the appearance of two structures on the property because of the size of the proposed garage. Mr. Barydukas agreed that the garage was a large structure. Mrs. Day inquired if the Pomeroys could live with a smaller structure and Mr. Barydukas stated that she would ask the Pomeroys about that question.

Chairman Smith inquired as to what the true hardship was. Mr. Barydukas stated that there was not any other place on the property in which to build the garage. Chairman Smith stated that this was a large building in size and shape. Mr. Barydukas stated that the reason for the large garage was that Mr. Pomeroy had two antique automobiles which he wanted to have shelter for as they were very valuable. In effect, Mr. Pomeroy would only be using a two car garage for everyday use. Mrs. Day inquired if Mr. Pomeroy already had a garage and was informed there was a one car garage attached to the house. Mrs. Day inquired as to the minimum height required in order to store the four automobiles. Mr. Barydukas stated that a minimum of 8 ft. was necessary for the overhead and 13 in. for the track. Mrs. Day asked if the 8 ft. included the roof and Mr. Barydukas stated that he would like to keep the same pitch on the roof for uniformity. He stated that he would have to go up about 3½ ft. and that the maximum he would need would be about 13½ ft. He informed the Board that on the new plats he had submitted, the height of the structure had been reduced. Mr. Barydukas stated that he could live with 18 ft. because of the flat pitch. The application had stated 21 ft. but the applicants were only intending to build it 18 to 19 ft.

There was no one else to speak in support or in opposition to the application. Mrs. Day stated that she could not support the 21 ft. garage with the attic. She stated that she understood that the antique vehicles were very valuable and that most people own two cars. Mrs. Day stated that she could go along with the four car garage but not with the attic. She asked that the Board defer the decision until the applicant could come back with a new plat showing a 13½ ft. pitch to eliminate the attic. Mr. DiGiulian seconded the request and it passed by a vote of 4 to 1 (Mr. Yaremchuk).

The Board recessed the matter to allow the architect to discuss the case with his client.

//

Page 31, July 28, 1981, Scheduled case of

11:10 A.M. EDDIE A. BEARD, appl. under Sect. 18-401 of the Ord. to allow construction of carport to 0.92 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-412), located 3206 Cofer Rd., Belair Subd., 50-4((20))145, Mason Dist., R-3, 10,010 sq. ft., V-81-M-106.

Mr. Ed Beard of 3206 Cofer Road informed the Board that his justification for the variance was there was no where else on his property to put the carport. In response to questions from the Board, Mr. Beard stated that he had owned the property for 1½ years. Mrs. Day inquired as to what was located behind his property and he informed her there was a County park. Mrs. Day inquired as to how Mr. Beard would get around the carport being only 0.92 ft. from the property line. Mr. Beard explained that there was a path going to the park which ran along the property line. Chairman Smith inquired if there was an existing carport on the property and Mr. Beard stated there was only a driveway there presently. Chairman Smith inquired if this was a new subdivision and Mr. Beard stated that his house was 25 years old.

There was no one else to speak in support and no one to speak in opposition.

Page 31, July 28, 1981 Board of Zoning Appeals
EDDIE A. BEARD

RESOLUTION

In Application No. V-81-M-106 by EDDIE A. BEARD under Section 18-401 of the Zoning Ordinance to allow construction of carport to 0.92 ft. from side lot line (7 ft. minimum side yard required by Sects. 3-307 & 2-412) on property located at 3206 Cofer Road, tax map reference 50-4((20))145, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981; and

RESOLUTION

032

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of thelot is 10,010 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, being narrow and has an unusual condition in that the property is a substandard lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 32, July 28, 1981, Recessed case of

MR. & MRS. LES POMEROY, V-81-M-105: Chairman Smith called the recessed case of Mr. & Mrs. Les Pomeroy which was passed over to allow the architect to discuss the variance with his clients. Mr. Barydukas, the architect, asked to be able to point out something to the Board. He stated that the height would only be about 14 ft. at the average grade. Chairman Smith stated that 14 ft. would allow for the second story. Mr. Barydukas stated that it would be cheaper to build without the second story but the applicants were reluctant to build a structure that would be partly on the ground in the back. Mr. Barydukas stated that the only reason they were asking for the second story was for a practical reason and from an aesthetic point of view. Mr. Barydukas stated that it would be cheaper to build the garage without the second story but that the Pomeroys were trying to consider the appearance of the structure from all sides and not just the front.

Mrs. Day withdrew her motion made earlier in the meeting to defer the application and Mr. DiGiulian withdrew his second. Chairman Smith closed the public hearing on the Pomeroy variance.

RESOLUTION

In Application No. V-81-M-105 by MR. & MRS. LES POMEROY under Section 18-401 of the Zoning Ordinance to allow construction of 21 ft. high detached garage with attic 4 ft. from the rear & side lot lines (21 ft. minimum yard & 12 ft. minimum side yard required by Sects. 3-307 & 10-105), on property located at 7009 Raleigh Road, tax map reference 60-4((2))270, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,500 sq. ft.
4. That the applicant's property has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property.

RESOLUTION

033

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED IN PART (to allow the construction of detached garage with attic 4 ft. from the rear & side lot lines providing that the garage does not exceed an average height of 14 ft.) with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 33, July 28, 1981, Scheduled case of

11:20 A.M. B. F. SAUL REAL ESTATE INVESTMENT TRUST, appl. under Sect. 18-401 of the Ord. to allow construction of additions to hotel facilities on C-7 land in combined development with office facilities on C-4 land, such that proposed F.A.R. on the C-7 land would be 1.458 (max. F.A.R. of 1.0 req. by Sect. 4-707), located 1960 Chain Bridge Rd., 29-4((1))1, 1A, 1B, & 1C, Dranesville Dist., C-7 & C-4, 387,867 sq. ft., V-81-D-107.

Ms. Minerva Andrews, an attorney with Boothe, Prichard & Dudley in Fairfax, represented the applicant. She informed the Board that B. F. Saul was the builder of the Holiday Inn which was zoned C-7 and had 187,000 sq. ft. She stated that B. F. Saul also owned lot 14 and parcel 8 north of the Holiday Inn on Greensboro Drive. Lot 14 was zoned C-4 and contained 204,331 sq. ft. of land. The floor area ratio was 1.65 for a C-4 district which permitted 337,146 sq. ft. of gross floor area for a building. Ms. Andrews stated that B. F. Saul wanted to combine the three parcels and develop an expanded inn, conference center and office complex as shown on the amended development plan. The proposed expansion would contain a total of 520,682 sq. ft. of gross floor area which equalled the total density permitted on the parcels if the project were treated as one building site.

Ms. Andrews introduced her partner, Mr. Ed Pritchard, to inform the Board as to what was proposed and how they had arrived at the development. Mr. Pritchard informed the Board that he had a long memory and remembered when the Holiday Inn was permitted to a prior owner before the existing Zoning Ordinance. The property had been rezoned at the request of the prior owner to the C-D category. Shortly after B. F. Saul became the owner of the inn, they came to the conclusion that they wanted to expand it and transform it into an inn and a conference center. At the same time that they were contemplating the expansion, owners of the Tysons II complex sought a rezoning of their property to the C-D category. The rezoning took a long time because of the Plus Planning. A new road plan known as International Drive to connect to Gallows Road with an interchange with Rt. 123 was proposed. The developers of Tysons II submitted a plan to allow them to have either an at-grade intersection with Rt. 123 or a grade separated interchange which had certain profers connected with it. Mr. Prichard informed the Board that the property had been rezoned shortyly before the adoption of the new Zoning Ordinance in 1978. Mr. Prichard stated that all during this time frame there was a great deal of interest as to how the property would have access to International Drive. Mr. Prichard stated that one of the agreements had been that the Holiday Inn would have its principal access to International Drive when it was built. Mr. Prichard stated no information had been given to the owners of the property as to how the interchange and crossovers would be built. The site plan for the Holiday Inn was submitted to the County which would allow construction of all the rooms, the dome containing an enclosed swimming pool, a restaurant, a conference center, etc. It did not include the office building at that time. Mr. Prichard stated that the office building was located on the extreme right of the Holiday Inn.

Mr. Prichard stated that the owners had acquired a strip of land to assure that they would have access. This strip of land was to the rear of Greensboro Drive. After viewing the plans for the proposed International Dr., it was determined that it would be impossible to make a left hand turn at International Drive to enter the driveway right beside International Drive. A site plan had already been submitted and was ready for approval and bonding but because of the problem of having a motal without access, B. F. Saul attempted to acquire some additional property so that no matter what happened with International Drive, they

034

would have access to their property. Mr. Prichard stated that the owners were able to acquire another parcel which was to the extreme right of their property and had frontage on Greensboro Drive and joined at the rear with the First American Bank Building. That parcel was under site plan for another office building but they bought it and voided that plan. They then tried to figure out how to use the additional property to complement their original plan of an inn and conference center.

Mr. Prichard explained to the Board that the only difference between the plan submitted to the Board for a variance and the one that was tentatively approved under the old Ordinance and ready for bonding was that they added a smaller office tower in the rear. They proposed an inn and conference center to fit in with the office building. The purpose of the office building was to allow people needing conference centers to rent the office space. Recreational facilities such as the swimming pool would be available and was a most attractive project. Mr. Prichard stated that it would be a great asset to the Tysons Corner area. Mr. Prichard informed the Board that at the time of the adoption of the new Zoning Ordinance in August 1978, Mr. Hendrickson of the County did not see a problem with the floor area ratio requirements imposed in the Ordinance because the project did not exceed the allowable F.A.R. for the B. F. Saul holdings. Mr. Prichard stated that the developers delayed the project, however, because they were still attempting to get better information on International Drive as to whether there would be an at-grade intersection or a grade separated intersection. After it was determined that there would be an at-grade intersection, the B. F. Saul Company was interested in picking up the project. However, it found out that the interpretation of the F.A.R. had been changed. They had been advised by the County that the 1.0 F.A.R. had to be adhered to on the front and a 1.65 F.A.R. on the rear. It had been suggested by the Zoning Administrator that the only possible relief was to apply for a variance.

Mr. Prichard informed the Board that the justification for the granting of the variance was because of the exceptional steep terrain. There was a sharp dropoff of 20 ft. in the middle of the property and then it rose very rapidly to Greensboro Drive in the rear. Mr. Prichard stated that the proposed project would allow the applicant use the terrain to his advantage. It would allow an underground parking garage in the low terrain which would be connected with the Holiday Inn and could be used jointly with the office building. Mr. Prichard stated that if the applicant could not get relief from the BZA, he could not build the project and would have to contemplate a different kind of project. The C-4 zoning would allow construction of a larger office building than had been planned but it would not be connected. The C-7 parcel would allow construction of a larger motel than was presently existing but it would not allow the construction of an inn and conference center because of the floor area ratio. Mr. Prichard stated that the two projects would be less attractive than the one combined project.

Mr. Prichard stated that a hardship did exist with the variance application. The hardship was that the fact that a large amount of money had been invested in the plans at a time when C-D zoning did not have the restrictions which were imposed presently. Time had been invested in trying to work with the terrain rather than regrading the lot. The project would be much more attractice than what the Ordinance would permit. Another hardship was the fact that the new Ordinance contained requirements that were not contained in the original Ordinance and the new interpretation of the Ordinance prevented the construction. Mr. Prichard stated that an argument could be made that this was a self-imposed hardship but he informed the Board it was really not self-imposed. The matter had come about as the developer tried to work out the problems with International Drive access when he was not aware of how the intersection would be built. The problem had caused a delay in the approval of the plans. During the delay, there was a change of Ordinance and a change of maps and a change of interpretation.

The change of the map was that the old category of C-D was changed to either C-7 or C-8. The category of C08 was changed to C-4. Mr. Prichard stated that the new categories were picked arbitrarily.

Mr. Prichard explained the duties and powers given to a Board of Zoning Appeals. He stated that he felt this situation fit the criteria for the granting of a variance. He stated that this was not a self-inflicted hardship. One additional factor for consideration was that originally the property was acquired by B. F. Saul and they were the owners of the building but they were not the owners of the lot. They had bought the option to buy the lot which would be exercisable the following year. However, he stated that B. F. Saul was the owner of the remainder of the land which was presently vacant.

Mr. Prichard informed the Board that they had the authority to impose certain conditions in granting relief. He stated that they would be willing to accept a condition that the B. F. Saul would exercise its option to acquire ownership of the land on which the motel sat and then do a reverse subdivision to create one lot so that there would be only one lot. Mr. Prichard stated that this would prevent the land from being divided up in the future and having two separate uses which might violate the F.A.R. Mr. Prichard stated that the public would benefit by the granting of the variance as they would get a desirable facility in the Tysons area which would attract new industrial businesses to the County.

035

In addition, he stated that this proposal would have less impact on the traffic situation at Tysons Corner. Mr. Prichard stated that if they built what was allowed by right which was two separate projects, there would still be the same amount of traffic but it would be distributed at different times of the day. The motel traffic would come at off peak times.

Chairman Smith informed Mr. Prichard that he had presented an excellent argument as he had managed to convince him to support the variance. Chairman Smith stated that he hoped the Board saw fit to grant the variance.

There was no one else to speak in support of the application and no one to speak in opposition. However, the Board was in receipt of a letter of support from the First American Bank Building officials stating that they did not have any objection to the granting of the variance.

R E S O L U T I O N

In Application No. V-81-D-107 by B. F. SAUL REAL ESTATE INVESTMENT TRUST under Section 18-401 of the Zoning Ordinance to allow construction of additions to hotel facilities on C-7 land in combined development with office facilities on C-4 land, such that proposed F.A.R. on the C-7 land would be 1.458 (maximum F.A.R. of 1.0 req. by Sect. 4-707) on property located at 1960 Chain Bridge Road, tax map reference 29-4((1))1, 1A, 1B & 1C, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-4 & C-7.
3. The area of the lot is 387,867 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including long and narrow and has exceptional topographic problems. This is the proper way to develop this property, merging the buildings together, and there is an unusual condition in that the Ordinance has changed since the Holiday Inn was started; there has been a new interpretation, a new Ordinance and a new Zoning Administrator.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. This variance is subject to the combination of the parcels into one parcel in May of 1982.

Mr. DiGiulian seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 36, July 28, 1981, Scheduled case of

11:30 A.M. RAOUL W. & PHYLLIS W. LOPEZ, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of existing carport to 4.5 ft. from side lot line such that total side yards would be 16.7 ft. (8 ft. min. but total of 20 ft. min. side yard req. by Sect. 3-307), located 9519 Vandola Ct., Bent Tree Subd., 78-3((5))231, Springfield Dist., R-3(C), 8,490 sq. ft., V-81-S-111.

036

The variance was rescheduled for September 22, 1981 at 10:00 A.M.

//

Page 36, July 28, 1981, Scheduled case of

11:40 A.M. ROBERT & BERNICE CARKHUFF, appl. under Sect. 18-401 of the Ord. to allow construction of second story addition to attached greenhouse to 1.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 1376 Kirby Rd., 31-2((1))71, Dranesville Dist., R-1, 2.528 ac., V-81-D-113.

Mr. and Mrs. Carkhuff of 1119 Crest Lane informed the Board that they were the owners of the property at 1376 Kirby Road. Ms. Susan Notkins, architect, was also present to present the proposal to the Board. Mrs. Carkhuff presented the Board with a letter of support from her neighbor. Ms. Susan Notkins of 1179 Crest Lane in McLean informed the Board that the Carkhuffs planned to build a greenhouse addition to the rear of the house. The existing greenhouse would be restored and would provide space for solar energy. It would have a walkout at the rear. Ms. Notkins stated that the hardship for the variance was the physical constraints of the property due to the unusual shape of the lot. More than 75% of the site was in the floodplain which ran up to the south side of the building. Ms. Notkins stated that a portion of the building was in the floodplain. The house had been built in the 40s. She stated that the location of the floodplain originally dictated the location of the building. Ms. Notkins informed the Board that the property had an unusual shape and had two front yard setbacks. The proposed addition would be 1 ft. from the side property line but the road was actually 20 ft. away. There was a wide pipestem between the road and the Carkhuff's property which was unbuildable. Ms. Notkins stated that the proposed addition would not be obstrusive at the road level.

In response to questions from the Board, Ms. Notkins stated that the narrow lot was a pipestem for the first lot and that it varied in width. Because of the pipestem, the addition would actually be 21 ft. from Clayborne Drive at its closest point.

There was no one else to speak in support and no one to speak in opposition to the request.

Page 36, July 28, 1981 Board of Zoning Appeals
ROBERT & BERNICE CARKHUFF

R E S O L U T I O N

In Application No. V-81-D-113 by ROBERT & BERNICE CARKHUFF under Section 18-401 of the Zoning Ordinance to allow construction of second story addition to attached greenhouse to 1.0 ft. from side lot line (20 ft. minimum side yard required by Sect. 3-107), on property located at 1376 Kirby Road, tax map reference 31-2((1))71, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 2.528 acres.
4. That the applicant's property has exceptional topographic problems and has an unusual condition of floodplain combined with the topographic condition which limits construction elsewhere on the property.

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

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

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

D37

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 37, July 28, 1981, Scheduled case of

12:00 NOON — THE CHARTER FOUNDATION, appl. under Sect. 3-E03 of the Ord. to permit private school of general education, located off of Utterback Store Rd., 7-3((1))21, Dranesville Dist., R-E, 67 ac., S-81-D-038.

& 12:00 NOON — THE CHARTER FOUNDATION, appl. under Sect. Sect. 18-401 of the Ord. to allow gravel parking areas & entrance road for proposed private school of general education (dustless surface req. by Sect. 11-102), located off of Utterback Store Rd., 7-3((1))21, R-E, 67 ac., V-81-D-102.

Mr. William E. Donnelly, III, of McCandlish, Lillard, Church & Best, represented the Charter Foundation. He informed the Board that they had submitted a proposal to locate a school on Utterback Store Road. Chairman Smith informed Mr. Donnelly that the Board had received a request to defer the hearing. The request was from the Board of Supervisors. However, due to the time factor and the fact that the Board had just received the request and the fact that there was a lot of people in attendance at the hearing, it was the Chairman's position that the Board continue the hearing. He stated that if the Board wanted to recess the hearing for additional information, it was up to the Board to decide. Mr. Donnelly asked to be allowed to speak to that issue. Chairman Smith stated that unless the Board overruled him, the BZA would continue with the hearing. Mr. Donnelly stated that he wished to proceed. Chairman Smith stated that the Board would have to make a judgment whether to delay its decision later in the meeting. Mr. Donnelly advised the Board that he wanted an opportunity to argue that point. Mr. Hyland stated that he was interested in hearing Mr. Donnelly's argument since the request for deferral had come to the Board at the last minute.

Regarding the merits of the argument, Mr. Donnelly informed the Board that this was two applications. The school site contained 67 acres on Utterback Store Road. The land was uninhabitable on three sides of the site. At the back of the site was the Windermere Subdivision but only two houses backed up to the site. Mr. Donnelly advised the Board that the school would be built in three phases. The lower school would be completed by September 1982 and would have 120 - 180 students from nursery age to grade 7. Phase II would be the upper school and was to be ready for the 1984-1985 session. Phase II would be the middle school and was slated for the 1988 time frame. Eventually, the school would have students from 3 years of age to high school. Mr. Donnelly stated that they were seeking approval for all three phases by reference. Mr. Donnelly stated that the problem the school faced was the financial constraints as far as acquiring the land. Chairman Smith stated that he did not have a problem with approval of the three phases as long as the school constructed in accordance with the time schedule given to the BZA.

Chairman Smith inquired as to the enrollment for Phase I and Phase II. Mr. Donnelly stated that there would be a total of 670 students for Phase I and Phase II and that the total for all three phases would be 861 students. The hours of operation would be 7:30 A.M. to 11:00 P.M. He indicated that the evening hours would be for community use. Mr. Donnelly stated that the site had a great natural beauty. The school would have a campus setting. Mr. Donnelly stated that the plans had respected the development so well, that the school would be a wild-life sanctuary. They planned to preserve as many trees as possible.

Mr. Donnelly stated that the applications met all of the legal standards. However, they proposed several considerations to the Board. The considerations were in response to the concerns of the Great Falls and Windermere citizens with whom the school had held several meetings. Mr. Hyland inquired if the citizens had received the considerations and Mr. Donnelly stated that they had and that a copy of the plat had been made available to them. Mr. Donnelly read the proposed development conditions into the record:

"1. The hours of operation shall be 7:30 A.M. to 11:00 P.M.
2. There shall be no student driving, except in extraordinary circumstances as determined by the school.
3. There shall be no pedestrian or vehicular access to the school via Welham Green Road.
4. There shall be no lighting for the athletic fields.

038

5. There shall be a public bridle trail as shown on the plat, which shall connect with a public bridle trail, in a location to be determined by the school generally along the northern property line of the site, leading to Utterback Store Road.
6. Open space shall be substantially as shown on the plat.
7. The school shall be served by private water and septic systems.

Chairman Smith questioned condition no. 7 as it indicated that the school would be on well water. Mr. Donnelly informed the Chairman that condition no 7 was a matter of concern to the Great Falls Civic Association as they did not feel it was enough of a guarantee. Chairman Smith inquired as to the reason for the condition and Mr. Donnelly advised him to ask that of the citizens. Apparently, the citizens felt that the use of public water would serve to lead to rampant development in the area. Mr. Donnelly advised the Board that in order to use the private water, the school was going to need a private water waiver from the Fire Marshal and the County Executive. Mr. Donnelly stated that the school was proposing to be served by private water as they could not risk any further investment in order to get a sign off from the Fire Marshal at this point in the process. The Fire Marshal had approved the concept but he could not officially sign off until the final engineering process. Chairman Smith stated that was the reason for his question as to whether it was possible to get a waiver. He inquired as to how large the pond would be. Mr. Donnelly replied that the architect had informed them it was oversize. The pond would be a multi-purpose and would serve for fire protection and storm water detention. The pond would be an alternative system for fire protection. Chairman Smith stated that the school could have a pressurized tank. Mr. Donnelly stated that the school did not want a tank there. Chairman Smith stated that the tank could be installed underground.

Mr. Yaremchuk inquired if the adjoining subdivision had public water and was informed they were served by private wells. Mr. Yaremchuk stated that if the school put in public water, then the citizens could tap on. Mr. Donnelly stated that the school had taken the position that the well was the best way to handle the water situation. Mr. Yaremchuk stated that from a health, safety and welfare standpoint, public water would be much more desirable for the school. Mr. Yaremchuk inquired as to what the property was planned for and was informed it was zoned two acres. Mr. Yaremchuk stated that the property could be developed with or without public water and did not understand the concerns of the citizens. Mr. Donnelly stated that the water controversy would be the same with or without the school. Mr. Yaremchuk stated that he realized that the citizens were afraid of the high density but he hated to see a school facility without central water. Mr. Yaremchuk stated that he had not made up his mind on the land use question yet. Chairman Smith advised that there were a lot of schools all over the state in the rural areas that were on well and they worked very successfully. Mr. Yaremchuk inquired as to what would happen if there was a catastrophe at the school but Chairman Smith stated that the pond should take care of it. Mr. Donnelly informed Mr. Yaremchuk that the Fire Marshal had approved the pond in concept. Mr. Donnelly stated that it was a very expensive procedure.

In conclusion, Mr. Donnelly advised the Board that people from Great Falls and the Windermere subdivision were present to speak to the Board on the special permit application. Mr. Donnelly informed the Board that there was another viewpoint for consideration and that was that a great number of students had to commute great distances to Maryland to go to a private school. He stated that there was a strong demand for a private school in the Great Falls area. Mr. Donnelly stated that there were letters of support as well as a petition of support which were in the file. The petition was signed by 56 people, 40 of whom resided in the Great Falls area. Mr. Donnelly read a letter of support from the Running Brook Homeowners Association which were located a mile north of the proposed site on Utterback Store Road. Mr. Donnelly informed the Board that it was not uncommon for persons living next to a proposed project to have some concerns about it but he asked the Board to keep in mind the greater public interest.

With regard to the variance application, Mr. Donnelly stated that the justification was that it would be a financial hardship on the applicant to have to pave the entrance and the parking areas. It was believed that the gravel entrance and a gravel parking area when compared to pavement would improve storm water retention for soil absorbtion and would facilitate a recharge of the ground water and be more in keeping with the rural character of the area. Accordingly, it was believed by the applicant that the variance was justified and Mr. Donnelly requested approval. In response to questions from the Board, Mr. Donnelly stated that the deceleration lane for Utterback Store Road was not one of the committments made. However, he stated that the deceleration lane issue would be addressed at the time of Site Plan and if it was a requirement of the County, then the school would go along with it. Chairman Smith inquired about paving a certain portion of the entrance way from Utterback Store Road for approximately 100 ft. Mr. Donnelly stated that the school would agree to that condition. Mr. Yaremchuk inquired as to Mr. Donnelly's response to the staff report which indicated that the property because of its topography would have difficulty in maintaining a dustfree surface. Mr. Donnelly stated that he had discussed that with their engineer and they were prepared to do the necessary grading to eliminate any slope problems. If it was necessary to grade, they would use retaining walls and make every effort not to have the grading effect the trees. Mr. Donnelly stated that if grading would not solve the problems in those areas where it was too steep, the school would pave those areas.

D39

In response to questions regarding the type of surface, Mr. Donnelly stated that they planned to use 21A gravel. Mr. Yaremchuk asked for an explanation of what 21A gravel meant. The engineer, Hank Gordon, advised the Board that they would use six inches of gravel and use a two shot treatment. Mr. Yaremchuk inquired if it would be rolled and was informed it would be. In response to a question about using tar, Mr. Gordon stated that they would not put any tar down.

Mr. Hyland inquired as to what was the Charter Foundation. Mr. Donnelly stated that the Charter Foundation was a Virginia non-profit corporation which had been duly incorporated under the laws of the State of Virginia. Mr. Donnelly stated that they had recently received their tax exempt status from the IRS. Mr. Hyland inquired as to the cost of paving which the school was trying to avoid by seeking the variance. Mr. Donnelly stated that the school might have a cost estimate but the variance involved more than financial considerations. He stated that this was a major undertaking. The school was on a tight budget. Even a small cost which could be avoided and not have an adverse impact on the neighborhood was desirable by the school because it might just be that little extra straw that broke the camel's back. Mr. Donnelly stated that the gravel would improve storm water retention and run more easily into the soil. There were concerns about the wells. The gravel would more readily recharge the ground water. In addition, the gravel was more in keeping with the rural character of the Great Falls area. Mr. Hyland stated that he understood all of that but he still wanted to know about the cost since the matter had been raised as part of the justification. Mr. Donnelly stated that the cost of paving in relationship to the total overall cost of the project was not a major cost factor. However, when there was a tight budget, it was that little extra which might impair the total project. Mr. Hyland inquired about the budget and was informed it would cost approximately $30,000 to pave the parking areas and gravel. Mr. Hyland inquired as to to the total overall cost of the project. In response, Mr. Donnelly stated that the most accurate figures he could give would be relative to Phase I and it was estimated that the construction cost of Phase I would be about $5 million dollars including $2 million dollars for land acquisition. Mr. Hyland stated that cost was not really a reason for requesting the variance as $30,000 out of $5 million would not "blow" the budget. Mr. Donnelly stated that he was not certain whether it would or would not "blow" the budget. He explained that it was a very tight budget and they did not want to take the risk if they could possibly avoid it. But beyond the cost issue was the storm water retention matter.

Chairman Smith asked for testimony in support of the applications. Ms. Tina Groovey, a housewife and mother, informed the Board that she was very much in support of the application. She stated that she had been a volunteer aide in the Fairfax County Public School system for 7 years and just wanted to say that she was very much in favor of the school and felt that it would be a great addition to the neighborhood. In addition, she stated that it would be a great opportunity for those children whose parents wanted them to attend an independent school and were being bused to other states and other cities. She alo felt that it would be a great asset as far as the wildlife assets and would help keep the children close to home. Mrs. Groovey stated that the school would help the whole neighborhood in general and urged the Board to give it a favorable consideration.

The next speaker in support was Mrs. Jorene Thomas of 413 Riverbend Road in Great Falls. Mrs. Thomas stated that she had written a letter of support but wanted to ask the Board to grant the special permit. She felt that the Charter School would be a great addition to the Great Falls community in the educational field and in the field of making the community great. Mrs. Thomas stated that she had a background in education as she had five children who had gone to school in the Fairfax County area. She had been on the Board of Directors of two private schools and had worked for 20 years as a volunteer in the SPCA and the County Council in the Schools. Mrs. Thomas stated that she had spent a great deal of time talking to the headmaster of Charter School and felt that its educational ideals and principles were very fine. She was personally acquainted for over 20 years with John Trot who was the Assistant Headmaster. She stated that he had a national reputation as an expert on Wildlife. Mrs. Thomas stated that she wished Charter School were being built next door to her rather than houses. She stated that if all the undeveloped land in Fairfax County were developed like Charter School proposed, she would find it most reassuring.

Mr. Curtis Bradley of 708 Walker Road in Great Falls spoke in opposition to the application. Mr. Bradley was on the Executive Committee of the Great Falls Citizens Association and Chairman of the Planning and Zoning Committee. He stated that he was speaking on behalf of the civic association and he read their resolution into the record. Mr. Bradley informed the BZA that his association had negotiations with the Charter School during the preceding months prior to the submission of the special permit. He stated that they had reached agreement on many issues but there were some major ones like the private water still being the primary issue that agreement had not been reached on yet. Mr. Bradley stated that his association supported the deferrment of the decision in hope that they could reach a resolution of the issues. He stated that if deferrment were not granted, then the association opposed the application. The major concern was the lack of planning in feasibility for the desirability of the school. Mr. Bradley stated that a marketing study should have been done to indicate where their student population would be coming from and the types of students.

040

In addition, Mr. Bradley stated that no feasibility study had been performed on the matter of private water, traffic and other matters of concern. With regard to the private water, Mr. Bradley stated that the citizens had fought against the intrusion of public water in the Great Falls area for many years. The plan for Great Falls called for two to five acre zoning and the school property was zoned two acre. Mr. Bradley stated that the citizens felt that public water would be imcompatible with that type of development. Mr. Bradley stated that the school would create a greater density as they were proposing 1,100 people on site including students, faculty and maintenance personnel as opposed to 120 people from 30 residential lots which would be the maximum density permitted in that area. There was also a consideration of traffic as the school would generate 560 car trips as opposed to 360 if the property were subdivided or developed as a two acre subdivision. Mr. Bradley stated that the main concern was the matter of public water. The citizens had been successful in keeping public water out of Great Falls and hated to see a precedent established for more intense development around the school and further down Utterback Store Road in the future.

Mr. Hyland stated that the school had proferred that there would be private water. He stated that the school would be stuck with that condition unless they wanted to change it in which case they would have to come back to the BZA. Mr. Hyland questioned why the citizens did not feel that was an acceptable guarantee that public water would not be brought to the property. Mr. Bradley stated that they had serious reservations regarding it. He was aware that the school could not go on public water without going back to the Board but they had a reservation because if the school had gone far enough into their project, the BZA would be reluctant to deny the public water. The citizens felt that a study should be done now to determine whether private water or public water was feasible before large sums of money were committed to the project. Mr. Hyland stated that he was confused as the citizens did not want public water and asked why a study should be performed to determine if it was feasible. The school had agreed to use private water. Mr. Hyland asked why the Board should even discuss public water. Mr. Bradley stated that the citizens' concern was that they felt the school would be talking about public water sometime in the future if the private water did not work out. Mr. Bradley stated that the concern was that if the school got far enough in the project and then determined that private water was not sufficient, the BZA would be reluctant to deny them the use of public water. Mr. Bradley stated the isse of private water had been raised by the citizens because the school's initial plan had been to use public water. The plan was only amended to private water after the citizens expressed their concern. Mr. Bradley stated that this was an indication that the school had never considered private water before and could not be certain that it would be feasible on the site. Mr. Bradley asked that the Board condition the special permit on a study being performed to determine whether the water would be adequate for a project of this magnitude.

Mr. Hyland stated that he assumed that matter was implicit in the application because the school could not build the project unless they had water available to them either public or through the use of private well system. Mr. Hyland stated that the school was going to have to demonstrate that no matter which system they used that it would be adequate or they would not be allowed to build. Mr. Bradley stated that the citizens did not want public water under any circumstances and that was where the negotiations had broken down. Mr. Yaremchuk stated that the water was becoming a pretty wet situation. He wondered if the BZA had the authority to tell someone that they could not have public water. Mr. Yaremchuk stated that he felt it would be up to the Health Department and the Fire Services agency to determine whether it should be central water or private water. Mr. Yaremchuk stated that he did not feel the Board could put that condition on a permit. Chairman Smith stated that the Board could condition a special permit with any reasonable conditions that they desired. In this case, he stated that the applicant had agreed to the condition and would be aware that he would be "saddled" with it. Chairman Smith stated that he was certain there would be adequate water supply underground in the area to serve the school. Chairman Smith stated that a school would not need as much water as 30 houses would as there was a very limited use of water for private and public schools. He stated that they would not have near the usage of water as 30 houses. Mr. Yaremchuk stated that even if the applicant agreed to the condition, the Board still had to look at the long term situation rather than a short term situation as far as health, safety and welfare were concerned. Mr. Yaremchuk stated that he could not see a school of this magnitude going without central water. He stated that he had a problem with it and did not want to be part of a situation restricting the future use of public water. Mr. Yaremchuk stated that there were a lot of things people did not want but they did not always get what they wanted. Mr. Yaremchuk did not agree that the Board had to put that as a condition whether the applicant agreed to it or not. Chairman Smith stated that it was an agreed condition between the applicant and certain property owners in the area. He stated that the Board should see fit to honor that agreement.

Chairman Smith stated that if public water were brought into the area in the future, the Fire Department or the Health Department might require the school to hook up to the public water. However, he stated that would not be considered as an application brought forth by the school but brought in by other development. Chairman Smith stated that he felt it would be very unusual to have public water brought in for two acre development. Mrs. Day stated that the applicant had agreed to the private water. Chairman Smith stated that he felt it was an excellent arrangement for this area and the development. He did not see any reason why the pond with proper fire protection would not be adequate for the school.

However, he stated that if the County Water Authority brought water into the area, the County would encourage the school to hook up to it. Chairman Smith stated that the school could hook up to it but only after a rehearing by the Board of Zoning Appeals.

Mr. Yaremchuk inquired of Mr. Bradley if he was more concerned about the school being in the area or the water being brought into the area. Mr. Bradley stated that they were more concerned with the water. Mr. Hyland stated that if the matter of water was resolved, what other things were the citizens concerned about. Mr. Bradley stated that very little planning had been done to determine what impact the school would have on the surrounding community. Mr. Bradley stated that a study should be done to tell whether the well would have an impact on the community. He asked that the special permit be conditioned on obtaining a report as to how the well would affect the adjoining properties. Mr. Bradley stated that traffic was another area that had to be considered. He stated that the traffic would be doubled. The trip plan per day was between 600 to 700 for the area. The school would add another 560 trips. Mr. Bradley was also concerned about the setbacks of the buildings from the property lines. He felt that with 67 acres, the school should place the buildings in the middle of the property so as not to burden the adjacent properties. Chairman Smith advised Mr. Bradley that the setback requirements for the school were the same as for a residence. The plan indicated that the setbacks were double of those required by the Ordinance. Mr. Bradley stated that he had another concern which involved the financial responsibility of the school. Chairman Smith advised Mr. Bradley that the Board did not have the authority to require the posting of a bond. Mr. Bradley stated that he was not suggesting that any bond be posted. He stated that his major concern was that the school would start construction and then flounder leaving some buildings on the property that would not be suitable for residential uses. Mr. Bradley stated that what they had suggested to the school was that construction on the property not begin until the school had demonstrated that they had the capability to complete Phase I. Mr. Bradley reminded the Board that Phase I would cost approximately $5 million. Mr. Bradley stated that the citizens felt it was a reasonable request that the school have a certain amount of the $5 million before beginning construction. Chairman Smith inquired of Mr. Bradley if he had ever known a school to go bankrupt. Chairman Smith stated that he objected to requiring financial conditions of any private school. Chairman Smith explained that the land would not be taken out of the residential category and that the only use that could be made of the property would be a school or strictly residential uses. It was not a rezoning of the property or a change in the district regulations. Mr. Hyland stated that the fear of the citizens was that the school would run of money leaving some buildings on the property. He indicated that he did not find that concern to be unreasonable. In fact, he stated that was also a concern of his own as he knew very little about the foundation.

Chairman Smith explained that the school would not be able to make any other use of the property if it flounderd. Mr. Bradley stated that he recognized that fact. He was aware of the fact that any other use would have to come back to the BZA. Mr. Bradley stated that after the school had spent several million dollars on construction and then floundred, the Board would not make then tear down the buildings. Chairman Smith stated that he assumed someone else would use the buildings for a school. He stated that if the worst were to happen as far as the economy was concerned, they would have to come back to the Board to request another use or a different applicant for the school. Mr. Bradley informed the Board that he was extremely concerned about the financial capabilities of the foundation since Mr. Donnelly had indicated that the foundation was operating on a shoestring.

The next speaker in opposition was Ms. Leta Dail, Administrative Aide to Supervisor Nancy Falck of the Dranesville District. She informed the BZA that the Board of Supervisors had voted unanimously that the matter be deferred because of a definite lack of information in the staff report regarding the traffic situation. Ms. Dail explained that the Board would have made its request earlier but had not received the staff report until Thursday of the previous week. Ms. Dail stated that she was asking the Board to deny the application for Charter School. This particular piece of property contained a lot of floodplain and could not be developed into more than 22 homes. Even without the floodplain, the maximum homes to be constructed would be 33. Ms. Dail stated that the applicant and others had tried to compare this school with the Madiera School. However, Madiera School contained 371 acres and the Charter School only had 67 acres. Madiera School only had 350 students and the Charter School would have 861 students. Only 233 students are boarded at Madiera School and the students did not have any access to an automobile. Charter School was attempting to locate within an existing subdivision. Madiera School had been built where there were no subdivisions. Charter School was carefully placing their buildings up against the rear and along the property lines. Madiera School had over 250 acres of buffer. Chairman Smith stated that Madiera School was also under a special permit. It had been developed on two different parcels.

Ms. Dail stated that aside from the master plan for the area, there was the traffic to be considered on Utterback Store Road which was a collector road. She stated that special permits were to be located so as to have direct access to a public street to accommodate pedestrian and vehicular traffice. The guidelines indicated that a school of this magnitude should be located off of an arterial road. Ms. Dail stated that Utterback Store did not meet the guidelines. It had extremely poor sight distance. Welham Greene had access from Georgetown Pike but there was concern about the traffic from the school. A traffic

042

count had been done on Utterback Store Road back in 1979. Ms. Dail stated that she had asked the Virginia Department of Highways to do another traffic count in the second week of September. A study had been done in March of 1980. The same study showed a drastic increase of 710 trips. However, she stated that both of the counts had been taken prior to the opening of the new elementary school on Utterback Store Road which began operation in January of 1981.

In addition to the traffic impact, Ms. Dail stated that it should be pointed out that the Charter School application did not fit the general standards of the Ordinance. It was not in harmony with the Comprehensive Plan. A school the size and scope of Charter Foundation was not in character with the surrounding area. With regard to the water situation, Charter School had agreed to attempt to handle the water situation through private means. Ms. Dail stated that there was no guarantee that the private water would work and if it was unfeasible, the citizens of Great Falls would lose one of their greatest tools if public water were allowed into the area, even for the school. Ms. Dail stated that drainage was also questionable. Therefore, she opposed the application.

Chairman Smith questioned Ms. Dail regarding her statement that the school did not meet the Comprehensive Plan for the area and asked where she would suggest a school of this size locate. Ms. Dail stated that it would be more appropriate near Dulles Airport. Mr. Yaremchuk inquired if Ms. Dail felt that Langley High School was compatible with the area and she stated that it was not.

The next speaker in opposition was Mr. Joseph Williamson of 929 Welham Green Road in the Windermere Subdivision. He stated that he lived next door to the subject property. Mr. Williamson stated that he was new to the County and he loved what he had here. He asked to go on record as opposing the school. He presented the Board with a petition from the residents of Windermere. He stated that the residents were not opposed to education or independent schools. They were concerned with the position taken by the school. Mr. Williamson stated that the citizens had attempted to resolve their concerns but, to date, they had been unable to get the answers. Accordingly, Mr. Williamson stated that the citizens were seeking a deferral. The petition contained 37 signatures of the residents of Windermere. Mr. Williamson stated that the Windermere Homeowners Association could not support the application unless it was adequately addressed. He stated that in the event the traffic studies were not adequate, he asked that the school not use Welham Green Drive. In addition, he asked that within two years, the Charter School Foundation abandon the right-of-way easement for Welham Greene Road. Mr. Williamson stated that Phase I was going right along the common property lines. He stated that he could envision a lot of construction workers going up Welham Greene Drive during the construction process. Mr. Williamson stated that Utterback Store Road would not be adequate to handle all of the traffic for the school. Welham Green Drive would be the next logical street to accommodate the traffic and the citizens opposed any additional traffic in their area. Mr. Williamson stated that problems existed with the interection of Utterback Store Road at the present time. If a school were located there, it would definitely create an increased traffic load. Mr. Williamson stated that the road was dangerous and was not suited for a school. Mr. Williamson requested that the homeowners be protected by bond or insurance. There was a concern that construction of the school would cause mud slides into Nichols Run which would back up onto the citizens' property. Mr. Williamson stated that the citizens wanted some assurance that damage would not happen. They wanted a fence erected and landscaping buffers provided. In addition, they wanted evidence that the water table in the area would not be adversely affected by the school. Mr. Williamson stated that this was a different angle to the water situation. He stated that the citizens of Windermere did not want the school drawing down the water supply. Chairman Smith inquired as to the average depth of the wells in the area and Mr. Williamson replied the average depth was 350 ft. Chairman Smith inquired as to the depth of Mr. Williamson's well but he stated that he did not know. However, Mr. Williamson indicated that he did not have a problem with his well so far. Chairman Smith advised Mr. Williamson that a 200 ft. well usually produced an adequate water supply. Mr. Williamson stated that if the water table was lowered, the home owers of Windermere would suffer. Mr. Williamson stated that the citizens had families to protect and were deeply concerned about the water situation. Mr. Williamson stated that neither the County or the State required a hydological report. He asked the Board to condition the special permit on obtaining a hydrological report.

Mr. Neil Price of 11012 Warwickshire Drive in the Windermere Subdivision spoke in opposition. He stated that he shared the concerns expressed by others regarding the public vs. private water as well as the impact of water on the development of Windermere. Another impact he wanted to emphasize was the impact of traffic which was already significant for the area. Windermere was accessed via Welham Green Drive which was a small, local road. Utterback Store Road was congested and several accidents happened frequently, many involving fatalities.

Mr. Williamson spoke to the Board regarding the height of the proposed building for the Charter School as the plan indicated a maximum building height of 60 ft. Chairman Smith stated that the Board could limit the height to be compatible with the residential development. He stated that the maximum limit was 35 ft. for a residential zone. Mr. Williamson stated that the citizens could not support the application as there were not sufficient data to adequately inform the residents.

The next speaker in opposition was Marge Kursick, a member of the Great Falls Civic Association Board of Directors. She stated that she was also a substitute teacher and worked for a realty company. Ms. Kursick lived on the west side of Great Falls. Ms. Kursick stated that the proposed Charter School was on the same roadway as the Forestville Elementary School which started at 9:10 A.M. and ended at 3:30 P.M. so as to avoid mixing bus traffic with the traffic during commuting time. Charter School was proposing to start at 7:30 A.M. and ending at 5 P.M. The school would have 830 students on about 20 to 30 buses in addition to the faculty people and the carpools for those students who could not take the bus. Ms. Kursick stated that this traffic would be coming out onto Utterback Store Road at the height of the rush hour. If they wanted to go east, they would have to cross Georgetown Pike. Buses would stop in route which would stop traffic and cause a backup all along the road. Charter School was also seeking to buy additional land on the other side of Welham Green in order to put an entranceway onto Rt. 193 east of Welham Green Drive which would have another access onto Georgetown Pike stopping traffic at the prime rush hour. Ms. Kursick stated that the people commuting were the ones paying taxes to the community and should have a say in how the community was to be organized. Ms. Kursick stated that with the purchase of the property was a plan to construct buildings. If the school did not work, the buildings cost a great deal of money so that the County would not rip them out. They would be used for something. The building would be large. They could easily become a juvenile intake department or a correctional school. Ms. Kursick stated that the buildings could easily have a negative impact on the community. Ms. Kursick stated that the community should not have to face that. Ms. Kursick stated that Mr. Donnelly had indicated there was a great need for private schools in the Great Falls area. She asked why if there was such a demand for private schools that the new elementary school had to be constructed. A survey had been taken prior to construction to determine if the people were interested in public or private schools. Ms. Kursick stated that there was a question as to whether there was a demand for private schools.

Chairman Smith inquired if Ms. Kursick had considered that the children would be bused to some private school during the commuting hours even if Charter School were not built. Mr. Kursick stated that the students were not coming from the immediate area but from a ten mile radius. Chairman Smith stated that the testimony had indicated that a great number of the potential students for Charter School would be coming from the Great Falls area. Ms. Kursick stated that no study had been made to confirm that and with the tuition rate of $3,000 to $4,000 per student, she was not certain as to how many parents in the Great Falls area would be able to send their children to private school. Chairman Smith stated that the public schools in the County were full for the fall enrollment. He stated that some of the schools in the lower grades had been full since they closed for the summer. Chairman Smith stated that there was a need for private school to accommodate the enrollment. Ms. Kursick stated that the existing private schools were not full.

The next speaker in opposition was Mr. Robert Clark of 808 Springvale Road. Mr. Clark stated that he had a problem with the school. He was concerned about the drainage of the water supply and the affluent contamination of the water. In addition, he stated that he was concerned about the traffic. Mr. Clark advised the Board that the scope of the Charter School was too large for the neighborhood. He stated that if the land use were developed into residential homes, there would only be about 100 people. The school would have a great deal many more people including the faculty. Mr. Clark stated that the school would disrupt the character of the neighborhood. Mr. Clark stated that if the Board desired to grant the school, he urged them to consider granting a smaller size school. Mr. Clark stated that many of the heated objections might disappear if the school were built on a smaller scale. Mr. Clark informed the Board that Charter School was a big commercial enterprise in a rural character area. Mr. Clark urged the Board that if they were not going to deny the school that they put their decision off for awhile.

Mr. Gary Seay of 917 Welham Green Drive was the next speaker in opposition. He stated that he did not oppose the school in concept but he had concern. Mr. Seay informed the Board that earlier in the meeting they had asked about the average well depth in the area. He stated that his well was 500 ft. deep and it had the capability of producing 200 to 300 gallons of water per minute. If the water table were affected, it would affect his well water supply. Mr. Seay stated that his second concern was the traffic situation and the fear that there might be a need to open up Welham Green Drive to accommodate the traffic. Chairman Smith advised Mr. Seay that the applicant had agreed not to use Welham Green Drive. Chairman Smith stated that the agreement would be affective during the time of construction of the school as well as afterwards.

During rebuttal, Mr. Donnelly informed the Board that the school opposed a deferral for several reasons. First, they believed that the BZA was required by law to decide the case within 60 days. Mr. Donnelly stated that the State Code was very clear. Chairman Smith stated that after the completion of the public hearing, the Board had 60 days in which to make a decision. He stated that the Board had the right to continue the hearing for any period of time it felt was necessary to accumulate additional material. Mr. Donnelly respectfully disagreed as he indicated that the State Code was very specific. Mr. Hyland inquired as to what happened if the Board did not decide a case within 60 days. Mr. Donnelly stated that it was a violation of the State Code and as he interpreted it, the

044

Board had to decide the case within 60 days. Mr. Donnelly stated that was all he had to say on the subject. Chairman Smith stated that the Board set the scheduling for a hearing date in a timely fashion. He stated that the BZA had the authority at the time of the hearing to continue it for additional information for any reasonable length of time after beginning the public hearing.

Mr. Hyland stated that he was personally bothered by the position taken by Mr. Donnelly. He stated that for the first time, today, he had heard concerns raised by the citizens regarding the wells. Mr. Hyland stated that the Board did not have the information until the hearing. If the BZA had to decide the case today, that one issue might be the one that would cause him not to support the application. He stated that he would have to say to the applicant that the application was denied because the Board did not have the right to get the additional facts. Mr. Hyland stated that he disagreed with Mr. Donnelly's position and was a bit concerned. He indicated that on occasions in the past, the Board had deferred action so it could view the property or whatever and he felt the BZA had every right to do so. Mr. Donnelly stated that the application met all of the merits and he felt the BZA had all the information needed to make a decision. Mr. Donnelly reminded the Board that the application had been filed on June 4th. The request for deferral came from Supervisor Falck's office and Mr. Donnelly stated that she had known of the plans months ago. He stated that the Board of Supervisors had known about the issues weeks ago.

Mr. Donnelly stated that his next point was one that the Board should give serious consideration to and that was that a deferral of the decision would likely kill the project. He stated that the school was on a very tight schedule. In order to meet the opening date, there was no slack provided in the schedule. He stated that if the BZA deferred, the applicant could not risk spending any more money on the project. If the Board waited another 60 days, it would be forcing the applicant to spend more money on the hope that it would be granted a special permit. Mr. Donnelly stated that it was not the applicant's fault that the special permit had not been pulled since Supervisor Falck was aware of the case. Mr. Donnelly stated that after filing the application, he had checked with the Planning Commission. When he realized that the Planning Commission was not going to pull the application, the applicant committed more money in its development. Mr. Donnelly stated that they had relied on a speedy processing of the case. Mr. Donnelly stated that there was a hidden reason behind the request for deferral and that was to give the Board of Supervisors time to amend the Zoning Ordinance to take the case away from the BZA.

Chairman Smith stated that any action taken by the Board of Supervisors would not affect this particular case since the BZA had already begun its hearing. He stated that there was a Virginia Supreme Court case preventing Board of Supervisors taking a case away from a Board of Zoning Appeals after the public hearing had started. Chairman Smith stated that case was the Chesterfield Civic Association vs. Chesterfield County. Mr. Hyland inquired as to the position of the BZA if such an attempt was made. Chairman Smith advised that it had never happened in the past but he had never seen the Board of Supervisors request a deferral like they had in this case. Mr. Donnelly stated that the way it was tossed out by Supervisor Falck's administrative aide, he took it as a threat. Chairman Smith stated that the Board of Supervisors could do anything they wanted to; however, he did not want to deny a private school from operating. Chairman Smith stated that he did not think the water table would be affected in the area. Chairman Smith stated that in all fairness, there were some questions that should be answered but he did not see how the Board could shorten the time any earlier than the 15th of September. He indicated that the Ordinance provided for the use in the district and that there had to be some hazards before he would vote against it.

Mr. Donnelly inquired as to what factors the Chairman felt needed to be supplemented. Chairman Smith stated that there was the question of the water supply. Mr. DiGiulian advised the Board that he would be reluctant to support the school since the BZA had already heard testimony about the water and he asked that the Board request a hydrological study. Mr. Donnelly stated that there was a report from Sunny Coleman who had walked the site and written a report. Mr. Donnelly read Mr. Coleman's statement into the record. Mr. DiGiulian stated that apparently there was conflicting testimony. He stated that it appeared the water table was dropping inthat area. Mr. DiGiulian stated that he knew Mr. Coleman and had known him for a long time but he was aware of wells failing in that area. Therefore, he wanted some assurance or some hydrological report, something other than a soils report. Mr. Donnelly stated that he appreciated Mr. DiGiulian's concern. Mr. Donnelly reminded the Board that the activities of the school would have less impact on the water than a subdivision would have. Theproperty could be subdivided by right. Mr. Donnelly did not feel that the applicant should have to address the issue beyond that point when the land could be subdivided by right. He inquired if the applicant was being asked to do the study just because someone had expressed a concern. Mr. DiGiulian stated that he did not have any concern with the application. Mr. Donnelly stated that he had made his point for the record and would not fight the Board any longer on it. Chairman Smith stated that he had a lot of respect for Mr. Coleman's analysis and expertise. Chairman Smith stated that one of the reasons he was inclined to agree with the request for a deferral was because a lot of the issues had just surfaced during the last four hours of testimony and he needed time to consider it.

Mr. Donnelly stated that he had a procedural suggestion that rather than going through a rebuttal, he asked if he could submit a written paper. The Board recessed for five minutes and came back to continue with the public hearing. Mr. DiGiulian moved that the Board continue the hearing until August 4, 1981 at 9:55 A.M. to allow for additional written testimony and oral testimony. Mr. Hyland seconded the motion. Mr. Hyland explained that he was supporting the resolution as he still had concerns regarding the water issue. He stated that a report had been submitted but he felt a one week deferral would give the parties enough time. Mr. Hyland stated that one week was a short time frame. However, he did not feel comfortable voting now. Mr. Hyland stated that he had a problem with water before which was why he was sympathetic. The one week would allow Mr. Donnelly to bring in his expert. The second issue was the financial experience of the applicant to get the project off the ground and be viable. Mr. Hyland stated that he would like the financial information and he felt the citizens wanted it also.

Chairman Smith suggested that the citizens appoint one person to represent them at the next hearing. He indicated that the citizen representative was the only one the Board would allow questions from at the next hearing. Chairman Smtih stated that the hearing would be limited to no more than 20 minutes. As a point of clarification, Mr. Donnelly advised that he might not be available but his partner, Randy Church would stand in for him. Mr. Donnelly stated that he understood the proposal. The vote on the motion to continue the hearing passed by 5 to 0.

//

Page 45, July 28, 1981, Scheduled case of

12:15 P.M. CONGRESSIONAL SCHOOL, INC., appl. under Sect. 3-203 of the Ord. to amend S-174-73 for private school of general education to permit the erection of a 10x24x15 ft. building as a shelter for horses during summer, located 3229 Sleepy Hollow Rd., 61-1((1))5, Mason Dist., R-2, 39.4 ac., S-81-M-042.

Mr. Royce Spence, an attorney, represented the school. He informed the Board that the special permit application was to allow a shed shelter for the horses during bad weather. The neighbors were not in opposition. Chairman Smith inquired as to what the shed would be constructed of. Mr. Spence stated that it would be frame and wood with a roof. Mr. Yaremchuk stated that if Mr. Barnes were still on the Board, he would have supported the application. Mr. Spence stated that there was no question about that.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 45, July 28, 1981 Board of Zoning Appeals
CONGRESSIONAL SCHOOL, INC.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-M-042 by CONGRESSIONAL SCHOOL, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-174-73 for private school of general education to permit the erection of a 10 x 24 x 15 ft. building as a shelter for horses during summer on property located at 3229 Sleepy Hollow Road, tax map reference 61-1((1))5, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 28, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 39.4 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance; and

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

RESOLUTION

046

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit is subject to all provisions of S-174-73.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 46, July 28, 1981, After Agenda Item

SERGASCO CORPORATION, V-80-V-111: The Board was in receipt of a request from Mr. William Hansbarger for a withdrawal of the variance application for Sergasco Corporation. Mr. DiGiulian moved that the Board allow the withdrawal without prejudice. Mr. Yaremchuk seconded the motion and there were no objections.

// There being no further business, the Board adjourned at 5:55 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on April 7, 1983

Daniel Smith, Chairman

Approved: April 12, 1983
Date

The Special Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, July 30, 1981. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Gerald Hyland and Ann Day. (Mr. John Yaremchuk was absent).

The Chairman opened the meeted at 10:35 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. KENNETH S. HARRIS, appl. under Sect. 18-401 of the Ord. to allow a 10 ft. fence to be constructed on one side of property (8 ft. maximum height for a fence in any yard of an industrial use req. by Sect. 10-105), located 7956 Twist Lane, Fullerton Industrial Park, 98-2((9))3, Springfield Dist., I-5, 116,026 sq. ft., V-81-S-083. (DEFERRED FROM JUNE 23, 1981 FOR NOTICES).

As the applicant failed to respond to the call, the Board deferred the variance application until September 22, 1981 at 11:00 A.M.

//

Page 47, July 30, 1981, Scheduled case of

10:10 A.M. MEHRDAD & CHERI NIKZAD, appl. under Sect. 18-406 of the Ord. to allow deck attached to dwelling to remain 14.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 6504 Twin Oak Place, Sleepy Hollow Subd., 51-3((7))9, Mason Dist., R-1, 28,325 sq. ft., V-81-M-085. (DEFERRED FROM JUNE 23, 1981 AT REQUEST OF APPLICANT AND FOR NOTICES).

As the notices were still not in order, the Board deferred the variance application until September 22, 1981 at 11:15 A.M.

//

Page 47, July 30, 1981, Scheduled case of

10:20 A.M. EDGAR R. BRITT, ET. AL., appl. under Sect. 18-401 of the Ord. to allow resubd. of four lots into three, one of which would have a width of 20 ft. (150 ft. min. lot width req. by Sect. 3-106), located 3126, 3128 & 3130 Barbara La., Oak Spring Village Subd., 48-4((6))5, 6, 19A & 19B, Providence Dist., R-1, 155,151 sq. ft., V-81-P-115.

Mr. Britt of 3128 Barbara Lane in Fairfax informed the Board that a previous variance had been granted to Mr. Gillies. In order to get a better arrangement for Mr. Gillies and Mr. Britt, it was decided to shift the 20 pipestem to the south. Mr. Britt stated that they had obtained easements to put in the driveway and now wanted to do away with the easements and were requesting the revision to the Ordinance. Chairman Smith inquired if the property had been subdivided in accordance with the original variance and whether three houses were going to be constructed. Mr. Britt replied that the house had already been constructed and he was living in one of them. Mr. Hyland inquired as to why the originally approved pipestem driveway was a problem. Mr. Britt stated that his lot encroached on Mr. Gillies' driveway. Mr. Britt stated that land was purchased from Mr. Gillies and they were not trying to get everything squared away.

Mr. Gillies informed the Board that he supported the variance application wholeheartedly. In addition, Mr. Britt presented the Board with a letter of support from Mr. Dewey. There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-P-115 by EDGAR R. BRITT, ET. AL. under Section 18-401 of the Zoning Ordinance to allow resubdivision of four lots into three, one of which would have a width of 20 ft. (150 ft. min. lot width req. by Sect. 3-106), on property located at 3126, 3128 & 3130 Barbara Lane, tax map reference 48-4((6))5, 6, 19A & 19B, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

RESOLUTION

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 155,151 sq. ft.
4. That the applicant's property has an unusual condition in the location of the driveway which was approved by the Board in 1978 but which created a problem and posed difficulty for ingress and egress and the proposed resubdivision is not objectionable to the three contiguous property owners involved.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire 18 months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian and Yaremchuk being absent).

Page 48, July 30, 1981, Scheduled case of

10:30 A.M. CHARLES V. REYNOLDS, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 19.4 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407), located 2836 Monroe St., Greenway Downs Subd., 50-2((4))95, Providence Dist., R-4, 5,066 sq. ft., V-81-P-116.

Mr. Charles Reynolds of 1836 Monroe Street in Falls Church informed the Board that he was requesting a variance because he needed 12 ft. additional family living space. The only direction he could extend was at the front of the house which presently was situated close to the front lot line. Mr. Reynolds informed the Board that he was an industrial arts teacher and had been teaching for 19 years. He had been living in his present house for 14 years. Mr. Reynolds stated that the houses next to him on lots 93 and 94 were situated only 15 ft. from the front lot line. Mr. Reynolds stated that his requested variance were granted, his house would then be 19.4 ft. from the front property line. Mr. Reynolds stated that his community was fairly old.

Chairman Smith inquired as to the number of other houses in the community that were located within the setback but Mr. Reynolds did not know. Chairman Smith inquired if the majority of the homes were within the setback but Mr. Reynolds stated that the majority of houses were 20 to 30 ft. from the street. However, the two houses next door to him were only 15 ft. from the street. Mr. Reynolds advised the Board that he had discussed the variance with his neighbors and there was not any objection. Chairman Smith inquired if the addition had already been started and Mr. Reynolds stated it had not been constructed. Mrs. Day asked what the room would be used for and Mr. Reynolds stated it would be a family room or an enlargement of the family room with a porch. In response to further questions, Mr. Reynolds stated that his house contained three bedrooms. Mr. Covington advised the Board that the property was substandard in width and in area. Chairman Smith indicated that everything on the street was substandard. Mr. Covington stated that it was a very old subdivision. Chairman Smith inquired if Mr. Reynolds was going to continue to live there and Mr. Reynolds replied he would. Chairman Smith inquired if the addition of the family room was for the benefit of the family rather than for a resale of the property. Mr. Reynolds assured him it would be for the benefit of the family.

There was no one else to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-P-116 by CHARLES V. REYNOLDS under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 19.4 ft. from front lot line (30 ft. min. front yard req. by SEct. 3-407), on property located at 2836 Monroe Street,

049

tax map reference 50-2((4))95, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 5,066 sq. ft.
4. That the applicant's property has an unusual condtion being a substandard lot and has an unusual condition in the location of the existing building on the property and the proposed addition will be compatible with the other houses in the area.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian and Yaremchuk being asbent).

Page 49, July 30, 1981, Scheduled case of

10:40 A.M. BATAL BUILDERS, INC., appl. under Sect. 18-406 of the Ord. to allow deck to remain 15 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 12398 Ox Hill Rd., Fair Oaks Estates Subd., 45-2((6))279, Centreville Dist., R-3, 11,331 sq. ft., V-81-C-117.

As the required notices were not in order, the Board deferred the variance until October 6, 1981 at 10:00 A.M.

//

Page 49, July 30, 1981, Scheduled case of

10:50 A.M. DONALD G. & JO ANN SMITH, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 7.5 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 9323 Covento Terrace, Mantua Hills Subd., 58-2((12))176, Providence Dist., R-2, 20,000 sq. ft., V-81-P-118.

Mr. Donald Smith of 9323 Covento Terrace in Fairfax was the applicant. Chairman Smith informed him that there were only three Board members present. Chairman Smith further stated for the record that he was not related to Donald or Jo Ann Smith and had never consulted them about the variance. Mr. Smith proceeded with his justification for the variance. He informed the Board that he was having to convert his present garage to house an elderly relative. He wanted to replace the garage by building a similar one on the other side of his property. In order to do so, he was requesting a variance of the setback to build within 7.5 ft. of the side lot line. Mr. Smith explained that it was impossible to build anywhere else on the property. The southwest corner of his property had a storm sewer easement. In addition, due to the topography leading to the storm sewer, there was a very pronounced slope which would require a significant amount of engineering in order to develop the area for the construction of a garage. Mr. Smith advised that it would be impractical to attempt to build in that area. Mr. Smith informed the Board that his neighborhood was

0 50

uncluttered and the houses were not jammed together. His nighbor's house next door sat about 27 ft. from the property line. Mr. Smith stated that there would be any cluttering of houses if the Board approved his variance. Mr. Smith stated that it was impractical to build on the other side of this property as there was only a section of 24 ft. Mr. Smith stated that he had lived in his house for 11 years. None of his neighbors objected to the variance. Mr. Smith urged the Board to grant the variance so he could make reasonable use of his property.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-P-118 by DONALD G. & JO ANN SMITH under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 7.5 ft. from side lot line (15 ft. minimum side yard req. by Sect. 3-107) on property located at 9323 Covento Terrace, tax map reference 58-2((12))176, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 20,000 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including narrow and has exceptional topographic problems in the rear yard and has storm sewer and sanitary sewer line easements on each side of the property which limit the use of the property and prevents construction of the proposed garage in the rear yard.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian and Yaremchuk being absent).

Page 50, July 30, 1981, Scheduled case of

11:00 A.M. DAVID C. ROWE, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing two car carport into a two car garage 8.1 ft. from side lot line such that total side yards would be 17.7 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 5506 Andrews Chapel Ct., Middleridge Subd., 77-1((6))330, Annandale Dist., R-3(C), 12,364 sq. ft., V-81-A-119.

Mr. David Rowe of 5506 Andrews Chapel Court in Fairfax informed the Board that he wanted to enclose his carport as it would enhance the appearance of his house by hiding the clutter and would increase the value of his property as well as his neighbors. In response to questions from the Board, Mr. Rowe stated that he had owned the property for one year. He stated that he was the second owner. The subdivision was about 3½ years old. Chairman Smith inquired as to the number of other homes that had carports such as this one. Mr. Rowe

051

replied that two homeowners had enclosed their carports. Chairman Smith stated that Mr. Rowe's reasons for wanting to enclose his carport were good but he indicated that the Board should defer decision on this one. Mr. Covington advised the Board that the variance was to the total overall side yard. Mrs. Day stated that it would not take up any more room. Mr. Rowe informed the Board that only 2 ft. projected into the setback area. Mr. Covington stated that the garage would meet the minimum side yard. Mr. Hyland inquired if the neighbors had any objection and Mr. Rowe stated they did not.

There was no one else to speak in support and no one to speak in opposition. Mr. Hyland stated that apparently the Board would have a 2 to 1 vote if they sought a decision today. Chairman Smith suggested that the Board examine the application carefully. Mr. Hyland inquired as to Mr. Rowe's plans for enclosing the carport as to whether he had any committments. He asked what problems would be caused if the Board delayed its decision. Mr. Rowe stated that a deferral would not cause any undue hardship. Mr. Hyland moved that the Board defer decision until Tuesday, August 4, 1981 at 2:15 P.M.

//

Page 51, July 30, 1981, Scheduled case of

11:10 A.M. K. F. ENTERPRISES, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into six lots with proposed lots 2 and 3 each having width of 4.5 ft. (70 ft. min. lot width req. by Sect. 3-406), located 6620 & 6624 Old Chesterbrook Rd., Traviata Subd., 30-4((1))37 & 51, Dranesville Dist., R-4, 3.0371 ac., V-81-D-120.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna represented the applicant. Chairman Smith informed Mr. Paciulli that there were only three Board members present and asked if he wished to proceed with the hearing. He advised him that he would have to have a good justification for him to support the request. Mr. Paciulli stated that he believed there was a good justification and asked to proceed.

Mr. Paciulli stated that the parcel had an unusual condition in that it was triangularly shaped and had a wide floodplain and steep slopes. Mr. Paciulli stated that these conditions did not occur in the surrounding land and were not the fault of the applicant. Mr. Paciulli stated that the land could be developed into 7 lots but the applicant was only seeking 6 lots with 2 lots having 5 ft. width. Mr. Paciulli stated that it was obvious that the 6 lot layout was vastly superior to the 7 lot plan. Chairman Smith inquired if a private road would serve the entire 6 lots and was informed it would. In response to further questions from the Board, Mr. Paciulli stated that lots 2 and 3 would each own 4.5 ft. of the road. Mr. Paciulli stated that the road would be 18 ft. wide and would be divided between four lots. There would be a 30 ft. easement around the road. Mr. Paciulli stated that the 18 ft. was recommended by Design Review of the County. He indicated that he had an approved preliminary plan which he could make available to the Board if it desired. Mrs. Day inquired as to what was on the east side of the property. Mr. Paciulli stated that the property on the east was owned by one individual. Mr. Paciulli stated that he had discussed the 7 lot subdivision with that property owner and he did not believe he would object to the 6 lot subdivision.

There was no one else to speak in support of the application. Ms. Susan Turner of 7535 Long Fellow Court spoke in opposition. Ms. Turner informed the Board that she was an attorney and a resident. Ms. Turner stated that the reasons for the opposition were that the property was triangular in shape and encumbered by a wide floodplain and steep slopes. There was a 40 ft. drop off from the street. Lots 2 and 3 which the variance was requested for contained dirt that was loose clay-like soil. Ms. Turner felt that if the houses were placed there, it would increase the amount of runoff and erosion. A great deal of effort had been done to reduce the runoff and flooding in the area. The two lots had a large part of their area in a floodplain. Ms. Turner advised the Board that she was also concerned about the traffic situation on Old Chesterbrook Road. She understood that the Highway Department did not plan to widen it. Mr. Hyland stated that six houses would not significantly hurt the traffic situation. Ms. Turner stated that she was concerned about the six houses all using the same driveway and the location of the driveway on a curve on Old Chesterbrook Road. People would be going around the curve and there would be low visibility. Mr. Hyland stated that anyone coming out the driveway would be able to see the approaching traffic. Ms. Turner stated that she could foresee problems because the street was very slick in the winter. Cars had ended up in driveways in the area due to their speed. Ms. Turner stated that anyone turning into the driveway would cause traffic to back up which would also be a bad situation. Mr. Hyland inquired as to the traffic conditions on the road at the present time. Ms. Turner did not know how many cars used it at the present time. Mr. Hyland inquired as to when the road would be widened. Ms. Turner stated that the land was being dedicated if this plan was approved. However, the bridge would not be widened. Mr. Hyland inquired as to who would do the widening but Ms. Turner stated that he should ask Mr. Paciulli. Ms. Turner informed the Board that she had several statements from neighbors or residents in the area who also opposed the variance request. Mr. Hyland inquired if they were oppossed to any development and Ms. Turner stated that they were not. The two primary concerns were that the neighbors had all had problems with flooding. Ms. Turner stated that she had only lived in the area for two years. The neighbors were all afraid to allow their children to play by the stream

052

after a rain. Ms. Turner stated that the people who would be living in the six new homes would have their backyards flooded.

Mr. Hyland inquired as to the type of development the neighbors would support since he had been shown a plan by Mr. Paciulli that the County would allow 7 lots. Ms. Turner replied that she had not seen the plan for 7 lots. After examining the plan, Ms. Turner stated that the 6 lots appeared to be a better situation. She informed the Board that no one had ever brought the plan to the attention of the citizens. Ms. Turner stated that the driveway appeared to be a better situation than all the lots using the same driveway. Chairman Smith stated that he would not normally support the pipestem concept but in this case, the subdivision was arranged better than what would be allowed by right. Ms. Turner stated that she understood the Chairman's point but asked for some more information to learn about the subdivision process. Mr. Hyland explained that the 7 lot subdivision was allowed by right. He stated that the applicant did not have the right to ask for the 6 lot subdivision. However the Chairman had indicated that the plan by right was less attractice for the community than the plan that was presently before the BZA for a variance. Mr. Hyland stated that it was clear that the 6 lot subdivision would have a better impact on the community. If the applicant did not get approval for the variance, he would go back to the 7 lot subdivision plan.

Ms. Turner informed the Board that she was concerned about what would happen to Pimmit Run. There was a slope there. Ms. Turner stated that the lots were similar on the 7 lot plan. Mr. Hyland advised Ms. Turner that the applicant may have problems with the erosion and water. However, they would not be able to build the houses without some control of the water. He stated that Mr. Paciulli would have to rechannel the water or work with the other agencies in the County to insure that there would not be a problem. Ms. Turner stated that it appeared she needed to proceed in other areas. Chairman Smith advised her that five people are notified at the time of site plan review. In addition, there was a public sign placed on the property. Chairman Smith stated that he was aware of the problems of flooding with Pimmit Run. However, he stated that the County would address the problems of flooding with Pimmit Run at the time of site plan review.

The next speaker in opposition was Mr. Clarence Bean of Old Chesterbrook Road. He stated that he had lived in the area for 25 years. He was interested in the road. He wanted to know if the road was going to be widened. Mr. Bean informed the Board that he had always had to pick up people out of yard. Mr. Bean stated that he would like to see sidewalks in the area as there were school children in the area. McLean High School was only two blocks away. Mr. Bean stated that the school children needed sidewalks. A walkway had been built on the bridge but it started nowhere and it went nowhere. Mr. Bean stated that something needed to be done with the road. Mr. Bean stated that he had noticed on the plan that they kept moving the road. He asked the Board to take that into consideration. Chairman Smith advised Mr. Bean that the applicant proposed to dedicate for the widening of the road. He inquired of Mr. Paciulli if they proposed to construct it. Mr. Paciulli advised the Board that no road work was required. They were dedicating for the future. Chairman Smith stated that when VDH&T was ready, it would widen the road.

The next speaker was Joyce Sutphin of 1817 Birch Road. She asked the Board to allow her five minutes with Mr. Paciulli to examine the plan in order to determine how it adjoined the street and what effect it would have. Chairman Smith explained how the applicant had the right to subdivide into 7 lots. The Board recessed for 10 minutes to allow her to talk with Mr. Paciulli. When the Board reconvened, Ms. Sutphin informed the Board that she had attended a hearing a year ago the BZA had refused the zoning because of a pipestem request and the problem of upkeep of a private road. Ms. Sutphin stated that now the Board was back to the private road question. At that hearing a year ago, one of the speakers had stated that he felt that whatever was done would set a precedent for their area. Ms. Sutphin stated that it seemed to her that whatever was done in this situation would lead in the direction of development for the area. She stated that notification of five residents at the time of site plan review was not sufficient as there had to be more interaction with the community.

There was no one else to speak in opposition. Chairman Smith closed the public hearing.

R E S O L U T I O N

In Application No. V-81-D-120 by K. F. ENTERPRISES, INC. under Section 18-401 of the Zoning Ordinance to allow subdivision into six lots with proposed lots 2 & 3 each having width of 4.5 ft. (70 ft. minimum lot width required by Sect. 3-406) on property located at 6620 & 6624 Old Chesterbrook Road, tax map reference 30-4((1))37 & 51, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

R E S O L U T I O N

053

WHEREAS, following proper notice to thepublic, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 3.0371 acres.
4. That the property is exceptionally irregular in shape being triangular and that this plan is better than the previously approved plan for 7 lots and that the property has exceptional topographic problems. The property has an unusual condition in that the floodplain covers a large portion of the lot which prohibits the choice location of the buildings and that the private ingress provides safer conditions and that the applicant has dedicated frontage for future road widening on Old Chesterbrook Road.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only and is not transferable to other land.

2. This variance shall expire eighteen months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian and Yaremchuk being absent).

Page 53, July 30, 1981, Recess

At 12:05 P.M., the Board recessed for lunch. At 1:15 P.M., the Board reconvened to continue with the scheduled agenda. Mr. DiGiulian had arrived at this point of the meeting.

//

Page 53, July 30, 1981, Scheduled case of

11:20 A.M. BERNARD MEREDITH WOODS & WENDY ANN WOODS, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5.5 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2355 Cedar La., Dunn-Loring Gardens Subd., 39-3((9))23A, Providence Dist., R-1, 0.9428 ac., V-81-P-121.

Mr. Bernard Woods of 2355 Cedar lane in Vienna informed the Board that he wished to add a garage to his house for the normal reasons. The logical placement of the garage was to the side as it would allow for the extension of the existing roofline. The Ordinance required a minimum of 20 ft. side yard. Mr. Woods stated that it was not possible to construct the garage without encroaching on some lot line as the lot tapered to the back. On the south side of the property, the property dropped . There was a well in the front of the house and an Oak tree. Mr. Woods advised the Board that none of his neighbors objected to the siting of his garage. As a matter of precedent, Mr. Woods advised that 4 out of 5 lots had structures within the 20 ft. setback.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-P-121 by BERNARD MEREDITH WOODS AND WENDY ANN WOODS under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 5.5 ft. from side lot line (20 ft. minimum side yard required by Sect. 3-107) on property located at 2355 Cedar Lane, tax map reference 39-3((9))23A, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

R E S O L U T I O N

054

WHEREAS, following proper notice to thepublic, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 0.9428 acres.
4. That the applicant's property is exceptionally irregular in shape being long and narrow and has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 54, July 30, 1981, Scheduled case of

11:30 A.M. ROLLING VALLEY PLAZA, INC. & TRAK AUTO, appl. under Sect. 18-401 of the Ord. to allow building mounted sign for individual enterprise within a shopping center, located 9234 Old Keene Mill Road, 88-2((1))4A, Springfield Dist., C-6, 19.455 ac., V-81-S-122.

Mr. Bernard Fagelson represented Rolling Valley Mall and Trak Auto. He stated that Trak Auto wished to establish a store within the area of the mall which had no direct frontage on the street. Mr. Fagelson showed the Board a plat of the mall which indicated that from two access points, there was a distance of 650 ft. and 820 ft. Mr. Fagelson stated that the existing sign would be removed and its place would be a sign for Trak Auto. Mr. Fagelson stated that this request was for a sign on the wall of the building itself. The sign would have red letters against a white background with a bronze frame. Mr. Fagelson indicated that he hoped the sign would be acceptable to the Board members. For the record, he showed the Board a picture of the east end of the mall which showed the location of where Trak Auto would be.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-S-122 by ROLLING VALLEY PLAZA & TRAK AUTO under Section 18-401 of the Zoning Ordinance to allow building mounted sign for individual enterprise within a shopping center on property located at 9234 Old Keene Mill Road, tax map reference 88-2((1)) 4A, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

R E S O L U T I O N

055

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

1. That the owner of the property is the applicant.
2. The present zoning is C-6.
3. The area of the lot is 19.455 acres.
4. That the applicant's business does not have frontage visible from the street and there's sufficient justification to meet the provisions of Sect. 12-305 which permits the variance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 55, July 30, 1981, Scheduled case of

11:40 A.M. COL. LOUIS J. MOLLI, appl. under Sect. 18-401 of the Ord. to allow parking area and driveway for a commercial use to be constructed of bluestone material (dustless surface req. by Sect. 11-102), located 2804 Sherwood Hall Lane, Gum Springs Subd., 102-1((6))5, Mt. Vernon Dist., C-5, 11,809 sq. ft., V-81-V-123.

Col. Molli of 1107 Potomac Lane in Alexandria informed the Board that he was the owner of the property at 2804 Sherwood Hall Lane. Before he began, he complimented the Clerk for assisting him in preparing for the hearing. He stated that he appreciated all of the help and assistance she had provided him. Col. Molli advised the Board that his wife planned to open an antique shop. He stated that they had been the pioneers in the community. Col. Molli showed the Board photographs of the property. He stated that he had submitted a site plan in April and had gotten approval for a two year exception to the dustless surface requirement. Then he found out that the County did not have the authority to grant the waiver. Col. Molli stated that he coordinated everything with Phil Garman. As a result of all that preliminary planning, Col. Molli was now submitting an application for a permanent variance. Col. Molli advised the Board that the present surface for the parking lot was hard with a 6" bluestone packed surface. The property would be used for an antique shop and would not have too much traffic in the parking area. Col. Molli advised the Board that there was no doubt in his mind but that he would blacktop the parking area at a later date. However, he felt that the surface with bluestone and then overtopped with paving at a later date would give it a real hard surface.

There was no one else to speak in support and no one to speak in opposition. Mr. Hyland informed the Board that he was a neighbor and was familiar with the property. He commended Col. Molli for his remarkable work on the property. Mr. Hyland advised the Board that there was a shopping center going in there.

R E S O L U T I O N

In Application No. V-81-V-123 by COL. LOUIS J. MOLLI under Section 18-401 of the Zoning Ordinance to allow parking area and driveway for a commercial use to be constructed of bluestone material (dustless surface required by Sect. 11-102) on property located at 2804 Sherwood Hall Lane, tax map reference 102-1((6))5, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

RESOLUTION

056

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-5.
3. The area of the lot is 11,809 sq. ft.
4. That the applicant has made considerable improvements to his property and the fact that the business is an antique shop there would not be more than one or two cars on the primeses at a time.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 56, July 30, 1981, Scheduled case of

11:50 A.M. JAYBEE BUILDERS, INC., appl. under Sect. 18-401 of the Ord. to allow construction of dwelling with attached garage 18 ft. from front lot line (20 ft. min. front yard req. by Sect. 3-507), located 7957 Parsons Grove, Harrison Grove Subd., 39-4((1))9, Providence Dist., R-5, 7,566 sq. ft., V-81-P-125.

Mr. Paul Holst of 4034 Roberts Road in Fairfax informed the Board that the proposed garage was an end-loading one rather than a front loading garage. The property was a corner lot. By loading from the end, the builder had reduced the depth of the garage to about 20 ft. However, due to an oversight, the architect had neglected to extend the garage for a large automobile. The variance was required to extend the garage two more feet. Mr. Holst advised the Board that there was a 10 ft. area between the property line and the street which had dedicated to the Virginia Department of Highways. Mr. DiGiulian inquired if the extension of the garage would cause a problem with the line of sight on Arden Street but Mr. Holst stated there would not be any problem. The speed limit was 25 m.p.h. Mr. Holst stated that there were trees in the back of the lot lines. Mr. Holst informed the Board that there would not be any monetary profit gained from the granting of the variance as the house was under construction and had not been sold at this point.

Chairman Smith inquired if there was a contract on the property and Mr. Holst stated there was not. Mr. Jim Brehony of JayBee Builders informed the Board that the garage was only 19.4 ft. in depth. A large car would not be able to pull in all the way into the garage.

There was no one else to speak in support and no one to speak in opposition.

Page 56, July 30, 1981 Board of Zoning Appeals
JAYBEE BUILDERS, INC.

RESOLUTION

In Application No. V-81-P-125 by JAYBEE BUILDERS, INC. under Section 18-401 of the Zoning Ordinance to allow construction of dwelling with attached garage 18 ft. from front lot line (20 ft. minimum front yard required by Sect. 3-507) on property located at 7957 Parsons Grove, tax map reference 39-4((1))9, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

R E S O L U T I O N

057

WHEREAS, following proper notice to hte public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-5.
3. The area of the lot is 7,566 sq. ft.
4. That the applicant's property is a corner lot with double front yard requirements and the house was already under construction with a garage when it was discovered that the garage was not large enough to accommodate some automobiles.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 57, July 30, 1981, Scheduled case of

12:00 NOON — MOTHER GOOSE 2, INC., appl. under Sect. 3-403 of the Ord. to amend S-40-77 for child care center to permit change of permittee, reduction in max. no. students to 60, and change of hours of operation to 7 A.M. to 6 P.M., located 6626 Costner Dr., 50-2((1))54, Providence Dist., R-4, 3.075 ac., S-81-P-043.

Ms. Janet Parks of 6633 Samson Street informed the Board that she and her friend wanted to amend their present Special Permit to reduce the number of children from 100 to 60 and to change the owners to Mother Goose 2 and to extend the hours from 7 A.M. to 5 P.M. to 7 A.M. to 6 P.M. The original permit had been granted to Rev. Costner. Chairman Smith inquired if the new owners had formed a corporation and was informed they had. In response to questions from the Board, Ms. Parks stated that the child care center would still be located in the Second Baptist Church. The original permit had been granted in 1966 and had been amended in 1977 to the Second Baptist Church. Chairman Smith stated that the Board should grant a new permit rather than amend the old one. Chairman Smith inquired if Rev. Costner was still with the church but Ms. Parks informed him that Rev. Costner had passed away ten years ago.

There was no one else to speak in support or in opposition to the application.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-P-043 by MOTHER GOOSE 2 INC. under Section 3-403 of the Fairfax County Zoning Ordinance to amend S-40-77 for child care center to permit change of permittee, reduction in maximum number of students to 60 and change of hours of operation to 7 A.M. to 6 P.M. on property located at 6626 Costner Drive, tax map reference 50-2((1))54, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 30, 1981; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-4.
3. That the area of the lot is 3.075 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of children shall be 60.
8. The hours of operation shall be from 7:00 A.M. to 6:00 P.M., five days a week, Monday through Friday.
9. The number of parking spaces shall be 10.
10. The number of employees shall be 6.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 58, July 30, 1981, Scheduled case of

12:15 P.M. ST. ANDREWS EPISCOPAL CHURCH, appl. under Sect. 3-103 of the Ord. to amend S-286-76 for church and related facilities to permit addition of two temporary classroom trailers located 6509 Sydenstricker Rd., 88-2((1))5, Springfield Dist., R-1, 8.49287 ac., S-81-S-044.

Mr. James Maloney, an attorney located at 4103 Chain Bridge Road, represented the church. He stated that he was appearing on behalf of Rev. Pryor. The church wanted an amendment to an existing special permit to allow them to have two temporary classroom trialers on the church parking lot. He stated that the installation of the trailers would have little or no impact on the church. Mr. Maloney stated that the existing church facilities were overcrowded and they had to turn away Sunday School pupils because of it. With the installation of the two temporary trailers, the only owner to be affected was Mr. Graham and he had signed a letter of approval. The trailers would be placed in a wooded area and have skirts around the bottom and would be located on the parking lot. In addition, the existing trees would remain in place and would serve as screening for the trailers.

Mrs. Dorothy Erickson of 6310 Rockwell Road in Burke represented the Rolling Valley West Civic Association. She informed the Board that the association was not opposed to the church's proposal but had some qualifications. She stated that the Board was sympathetic to the church's request for trailers for educational purposes in lieu of building anything at this time. However, the civic association was concerned because the church property was very visible from Old Keene Mill Road and Shiplett Boulevard. In order to minimize any adverse visual effect of the trailers, the Board had three requests for the BZA's consideration. (1) That the trailers be so placed and if the natural growth was inadequate so landscaped that the trailers would not be visible at any time during the year from Old Keene Mill Road. Mrs. Erickson stated that the spot for the proposed trailers was elevated and could be seen from most any direction. She asked that a row of trees along Old Keene Mill Road be planted to further screen the trailers. (2) That the number of trailers be limited to the two requested. Mrs. Erickson felt that additional trailers could present a problem

059

of concealment and could create a trailer park look. (3) That a time limit of two years be included in the granting of the special permit. Mrs. Erickson informed the Board that if the three objections were satisfied that the civic association would not have any objection to the granting of the special permit.

Mr. Hyland pointed out the proposed location of the trailers to Mrs. Erickson since she was not certain where they would be located. Mr. Hyland then inquired if the trailers could be seen from Old Keene Mill Road and Mrs. Erickson stated that they could still be seen as it was an elevated area. She again stated that it would help if there were trees planted along Old Keene Mill Road.

During rebuttal, Mr. Maloney stated that the church was placing the trailers on the Sydenstricker side of the parking lot which was the furthest point away from Old Keene Mill Road. Mr. Maloney stated that the trailers had to be kept near the existing buildings since there would not be any hookups in the trailer to water. He stated that he did not believe the visual impact from Old Keene Mill Road would be noticeable. Mr. Maloney stated that there was an enbankment between Old Keene Mill Road and the church parking lot. Mr. Maloney stated that it was difficult for anyone driving along Old Keene Mill Road to see the permanent buildings located on the property and the proposed trailers would be even further away. The trailers would sit lower than the existing permanent buildings. Mrs. Erickson stated that the church parking lot was quite noticeable from the road as there were no trees to screen the area. Mr. Maloney informed the Board that a final design had not picked for the classroom trailers but they would be designed in such a manner as to blend in with the wooded background area. Mr. Maloney felt that it was not necessary to put additional screening or shrubbery between Old Keene Mill Road and the parking lot. He stated that the trailers would sit back in an existing wooded area and would have small shrubbery around the bottom. Mr. Maloney stated that the trailers would not be the shiny mobile home type but a woodgrain panel type. In response to a question from the Chairman, Mr. Maloney stated that the trailers would not be white and would blend in with the area. Mr. Maloney asked that the time limit on the trailers be for five years because of the church's financial condition.

R E S O L U T I O N

Ms. Day made the following motion:

WHEREAS, Application No. S-81-S-044 by ST. ANDREWS EPISCOPAL CHURCH under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-286-76 for church and related facilities to permit addition of two temporary classroom trailers on property located at 6509 Sydenstricker Road, tax map reference 88-2{(1)}5, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 30, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 8.42987 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance; and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

R E S O L U T I O N

060

4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The additional number of students shall be 36 in the proposed trailers.
8. The hours of operation shall be normal church activities.
9. This resolution is subject to all other provisions of S-286-77 not altered by this resolution.
10. This special permit is granted for a period of two years with the Zoning Administrator empowered to grant three (3) one-year renewals.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 60, July 30, 1981, Scheduled case of

12:45 P.M. CARL RICHARD BOEHLERT, appl. under Sect. 18-401 of the Ord. to allow subdivision into 10 lots, with proposed lots 3, 4, 5 & 6 having width of 6 ft. & proposed lots 7 & 9 having width of 9 ft. (70 ft. min. lot width req. by Sect. 3-407), located 2310 & 2320 Great Falls St., 40-4((1))17A & 19, Dranesville Dist., R-4, 2.5087 ac., V-81-D-044. (Deferred from May 5, 1981 for notices; deferred from June 16, 1981 & July 16, 1981 for full Board).

Mr. Charles Runyon of 7649 Leesburg Pike in Falls Church informed the Board that the property had been the subject of a rezoning application. The Boehlerts had lived on the property since the establishment of Rt. 66 which had cut through the area leaving the property isolated. Mr. Runyon advised the Board that he had tried to get the property zoned for townhouse cluster development but Plan Review would not revise the density to any more than it was at present. Plan Review had suggested that the applicant go through a variance in order to get the yield of the R-4 zoning. Mr. Runyon stated that he had played with the development several times because lot 6 had a topographic problem and lot 8 had a house which was to remain and so did lot 10. Mr. Runyon stated that he had submitted photographs for the file. Mr. Runyon stated that Rt. 66 was about 25 ft. below lot 8. Big tall walls had been constructed as sound barriers. Mr. Runyon stated that the Boehlerts wanted to build a new house on lot 6 or 7 but they needed a variance to establish the lots. Mr. Runyon stated that the metro station was within walking distance from the property. Mr. Runyon stated that this was a reasonable request and he urged the Board to grant the variance. He presented a letter of support from Mr. Gibson for the file.

There was no one to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-D-044 by CARL RICHARD BOEHLERT under Section 18-401 of the Zoning Ordinance to allow subdivision into 10 lots, with proposed lots 3, 4, 5 & 6 having width of 6 ft. and proposed lots 7 & 9 having width of 9 ft. (70 ft. min. lot width required by Sect. 3-407) on property located at 2310 & 2320 Great Falls Street, tax map reference 40-4((1))17A & 19, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 2.5087 acres.
4. That the applicant's property is exceptionally irregular in shape, being "L" shaped and has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property. The applicant lost some property due to development of Rt. 66 which restricted frontage.

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

RESOLUTION

061

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 61, July 30, 1981, Scheduled case of

12:30 P.M. RESTON PRESBYTERIAN CHURCH, appl. under Sect. 3-E03 of the Ord. to permit construction and operation of a church and related facilities, located 1632 Hunter Mill Road, 18-3((1))6, Dranesville Dist., R-E, 5.1547 ac., S-81-D-045.

&

12:30 P.M. RESTON PRESBYTERIAN CHURCH, appl. under Sect. 18-401 of the Ord. to allow gravel parking areas and driveways for church and related facilities (dustless surface req. by Sect. 11-102), located 1632 Hunter Mill Rd., 18-3((1))6, Dranesville Dist., R-E, 5.1547 ac., V-81-D-124.

Pastor Bill Steiner 2334 Herley Court in Reston apoligized to the Board for not being present when the applications were called earlier in the meeting. He stated that he would make his presentation as brief as possible. The application was seeking permission for the church to build on Hunter Mill Road. Currently, the church was using the Fairfax County public schools for its services. The church had hired the architectural firm of Abrash, Eddy & Eckert to design the building. The plans called for construction of a very austere building containing 10,000 sq. ft. It was the intent of the congregation to build the church through contributions so as not to have any debts. They hoped to begin construction in the fall of 1981 and be out of the school by the fall of 1982.

In response to questions from the Board, Rev. Steiner stated that the existing structure on the property would be used for small meetings. In addition, the custodian would live in the structure. Chairman Smith inquired if the structure would always remain on the property and Rev. Steiner stated that it would as the church would need the space.

As for the justification for the variance, Rev. Steiner stated that the main reason for requesting a variance to the dustless surface was the economics. The church hoped to begin second phases of construction in the future. Rev. Steiner introduced the architect, Mr. Abrash, to enlighten the Board about the justification. Mr. Abrash informed the Board that there was a hill which would prevent paving the parking lot. Chairman Smith inquired as to why the church could not pave up to the parking lot and Rev. Steiner indicated that would not be a problem.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-D-045 by RESTON PRESBYTERIAN CHURCH under Section 3-E03 of the Fairfax County Zoning Ordinance to permit construction and operation of a church and related facilities on property located at 1632 Hunter Mill Road, tax map reference 18-3((1))6, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing held by the Board of Zoning Appeals on July 30, 1981; and

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

R E S O L U T I O N

062

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-E.
3. That the area of the lot is 5.1547 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be the normal hours of church operation.
8. The number of parking spaces shall be 107.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 62, July 30, 1981 Board of Zoning Appeals
RESTON PRESBYTERIAN CHURCH

R E S O L U T I O N

In Application No. V-81-D-124 by RESTON PRESBYTERIAN CHURCH under Section 18-401 of the Zoning Ordinance to allow gravel parking areas and driveways for church and related facilities (dustless surface required by Sect. 11-102) on property located at 1632 Hunter Mill Road, tax map reference 18-3((1))6, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 5.1547 acres.
4. That the applicant has candidly stated that there are economic and financial considerations involved in the project and in view of the fact that this is Phase I of the project and it is anticipated that there will be a second and third phase in which the area eventually will be entirely paved, sufficient justification exists for the granting of the variance.

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

063

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. The applicant shall pave the ingress from Hunter Mill Road to the crest of the hill which is at the point on the access road where there is an existing one-story structure.

Ms. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 63, July 30, 1981, Viewing of Property

At 2:45 P.M., the Board adjourned the meeting in order to view the property of Herbert L. Goodwin which was the subject of an appeal. The decision had been deferred from July 28, 1981 to allow the Board to view the property with the final decision being scheduled for August 4, 1981.

// There being no further business, the Board adjourned at 2:45 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on April 7, 1983.

Daniel Smith, Chairman

Approved: April 12, 1983

064

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, August 4, 1981. All Board Members were Present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:20 A.M. and Mrs. Day led the prayer.

The Chairman called the recessed case of

9:55 A.M. RECESSED HEARING OF: THE CHARTER FOUNDATION, appl. under Sect. 3-E03 of the Ord. to permit private school of general education, located off of Utterback Store Road, 7-3((1))21, Dranesville Dist., R-E, 67 ac., S-81-D-038. (Deferred from July 28, 1981 for additional written testimony).

Chairman Smith inquired if the Board had any questions in connection with the testimony that had been received. Mr. Hyland stated that the applicant's statement and the hydrological report which had been submitted were very helpful as it alleviated some of the issues. Mr. Hyland stated that the hydrological report covered what had been in the file and was supportive of the staff report. Mr. Hyland stated that there had been a suggestion in the staff report in terms of the number of students that should be permitted to be housed at the facility in that it was a lesser number than had been requested by the applicant. In addition, it had been suggested that the traffic impact was an issue if the school had 850 students. Mr. Hyland stated that one solution would be to approve construction for Phase I and II and limit the number of students to 600 or so as suggested in the staff report and to consider Phase III with an increase in students at a later date. By approving Phase I and II, it would allow the community to look at the traffic impact. Mr. Hyland stated that he appreciated the additional testimony that had been presented by the applicant and the staff as it eliminated the concerns he had at the last meeting.

There were no further comments from the Board and the public hearing was closed.

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-D-038 by THE CHARTER FOUNDATION under Section 3-E03 of the Fairfax County Zoning Ordinance to permit private school of general education on property located off of Utterback Store Road, tax map reference 7-3((1))21, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 28, 1981 and deferred until August 4, 1981 for additional written and oral testimony; and

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

1. That the applicant is the contract purchaser.
2. That the present zoning is R-E.
3. That the area of the lot is 67 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for

such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 660 for all three phases of construction plus necessary staff.
8. The hours of operation shall be 7:30 A.M. to 11:00 P.M.
9. There shall be no student driving, except in extraordinary circumstances as determined by the school.
10. There shall be no pedestrian or vehicular access to the school via Welham Green Road.
11. There shall be no lighting for the athletic fields.
12. There shall be a public bridle trail, in a location to be determined by the school generally along the northern property line of the site, leading to Utterback Store Road.
13. Open space shall be substantially as shown on the plat.
14. The school shall be served by private water and septic systems.

Ms. Day seconded the motion.

The motion passed by a unanimous vote of 5 to 0.

Page 65, August 4, 1981, Recessed Case of

9:55 A.M. RECESSED HEARING OF: THE CHARTER FOUNDATION, appl. under Sect. 18-401 of the Ord. to allow gravel parking areas & entrance road for proposed private school of general education (dustless surface req. by Sect. 11-102), located off of Utterback Store Road, 7-3((1))21, R-E, 67 ac., V-81-D-102. (Deferred from July 28, 1981 for additional written testimony).

The Board had received the written testimony prior to the hearing and had discussed it prior to the resolution on the special permit application.

In Application No. V-81-D-102 by THE CHARTER FOUNDATION under Section 18-401 of the Zoning Ordinance to allow gravel parking areas and entrance road for proposed private school of general education (dustless surface required by Sect. 11-102) on property located off of Utterback Store Road, tax map reference 7-3((1))21, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1981 and deferred until August 4, 1981 for additional written and oral testimony; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 67 acres.
4. That the gravel would help the drainage situation.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

066

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. The applicant shall pave the first 100 ft. from Utterback Store Road.

4. The applicant shall provide a deceleration lane in accordance with the recommendation of the Director of Environmental Mangement.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 5 to 0.

Page 66, August 4, 1981, Scheduled case of

10:00 A.M. FRANK D. BARLOW, III, appl. under Sect. 18-406 of the Ord. to allow a house with attached garage to remain 19.3 ft. from side and 21.5 ft. from rear lot line (20 ft. min. side & 25 ft. min. rear yard req. by Sect. 3-107) and to allow deck to remain 12.3 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 2852 Cedarest Rd., Melville Subd., 49-3((2))12, Providence Dist., R-1, 16,018 sq. ft., V-81-P-127.

As the required notices were not in order, the Board deferred the variance until October 6, 1981 at 10:15 A.M.

//

Page 66, August 4, 1981, Scheduled case of

10:10 A.M. WILFRED W. & DORIS W. BORLAND, JR. & BARLOWS, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into two lots, each of which would have width of 6.21 ft. (200 ft. min. lot width req. by Sect. 3-E06), located 9028 Jeffery Rd., River Park Estates Subd., 8-2((1))9B, Dranesville Dist., R-E, 5.8087 ac., V-81-D-128.

Mr. Timothy Yockey, an employee of Wilfred Borland & Barlows, Inc., represented the applicants. He explained that the justification for the granting of the variance was the fact that the carrying of the real estate tax bill on the property was a great burden to the property owners. The access easement as shown on the site plan would not conflict with the private road. He stated that an issue was being made of the maintenance of the road. Mr. Yockey stated that the lots as designated would only be serviced by the existing access easement up to the point that Mr. Borland presently used it and for lot 9. He stated that the roadway as it continued on to back would not be used by the second lot if the property were subdivided. It would be serviced by an easement to be granted by Mr. Wilfred Borland. Mr. Yockey stated that there would not be any serious runoff problems to bother the existing lot. He informed the Board that this type of pipestem development had been done in the area already.

Mr. Yockey informed the Board that the comments in the staff report from Design Review made an issue out of equitable maintenance of the existing roadway. He stated that the roadway had been dedicated in part to the front lot and was used by Mr. Borland as well as the owner of the front lot. Mr. Yockey stated that if the subdivision were allowed, the third lot would also use the roadway. Mr. Yockey stated that any owner of the proposed lot would not use the roadway past the point that Mr. Borland presently used it. There would be an easement across Mr. Borland's property to service the new lot. Mr. Yockey stated that there would not be any water or environmental problem that would infringe on the existing private roadway. There would not be any maintenance problem. Mr. Yockey stated that it was a burden on the property owner to pay the full tax load. Therefore, they were asking for a variance to subdivide the property.

Chairman Smith inquired if Mr. Yockey was aware that two years the BZA had denied a similar request for the property. Mr. Yockey stated that he was aware of it but understood that there was a zoning controversy as far as downzoning the area. In addition, the original request had been for four lots.

There was no one to speak in support of the application. The following persons spoke in opposition. Mr. Steven Burnette of 9100 Jeffery Road informed the Board that he had been present three years ago when the original request was denied. He stated that this was the third time he had been to the BZA on the same piece of property. He stated that he was transmitting a letter of opposition to the Board and he distributed it to the BZA. One point he made to the BZA was with regard to the applicant's statement about the tax burden, and he reminded the Board that a financial reason was not justification for the granting of a variance.

The next speaker in opposition was Mr. Harry S. Stahl of 9108 Jeffery Road who was also present two or three years on a proposal which in substance was identical to the one being considered presently. He informed the Board that he did not understand the point of the BZA ruling on it time and time again. The issue was the 200 ft. frontage requirement and the request of the applicant to have 6.21 ft. frontage instead. Mr. Stahl questioned why the citizens had to keep coming back every year. Mr. Yaremchuk informed Mr. Stahl that the applicants had the right to come back after a year. If they got denied one year, they could return a year later and try again. Mr. Yaremchuk stated that the system had to be cherished. Mr. Stahl stated that he would continue to come back and oppose the applications. Chairman Smith informed Mr. Stahl that this was a different applicant. Mr. DiGiulian noted that the variance request which was denied in 1978 was for four lots. Mr. Stahl stated that the original request had been reduced to three lots voluntarily at the request of staff and the BZA had ruled on three lots. Therefore, Mr. Stahl stated that it was essentially unchanged from what was presently being considered. Mr. DiGiulian stated that this request was only for two lots but he was informed by Mr. Stahl that one lot had already been split off so it was still, basically, the same application that was denied.

Mr. Otto Spokas of 9340 Jeffery Road also spoke in opposition to the requested variance. He informed the Board that he was the owner of the 28 acre parcel in back of the proposed subdivision. He stated that a letter of opposition had already been forwarded. Mr. Spokas stated that Mr. Borland was a member of Barlows, Inc. and was aware of the conditions or limitations of the property from the last hearing. The first requested variance was for four lots and then they had cut it down to three lots and afterwards lopped off the front piece. Mr. Spokas stated that this request involved a pipestem going back to two lots which was the exact number of lots being served by the previous requested variance. Mr. Spokas stated that his letter outlined the difficulty with the access and egress to his property after Barlows purchased their property. Mr. Spokas stated that his road was used for joyriding and that Barlows had ignored his requests to stay off his property until he had sent them a registered letter indicating that if they continued to use his road, he would prosecute them. Mr. Spokas explained to the Board that his wife had a heart problem and he had had to take her to Fairfax Hospital at times. He was concerned about the trucks of Barlows being parked in the roadway. Mr. Spokas stated that he was upset that the resubdivision would allow the construction equipment to come in on the easement churning it up and he would not be able to get out. Mr. Yaremchuk stated that whether the subdivision was granted or not, the easement could be blocked. Mr. Spokas indicated that if the Board granted the variance, he would have more of this type of delay impeding his ingress and egress. He stated that he had a right to use the easement but he could not prosecute every time it was blocked. Mr. Hyland asked if Mr. Spokas had ever brought his concerns to the attention of Barlows and Mr. Spokas stated that he had never discussed it with them but had sent them a registered letter to stay off his property. Mr. Spokas informed the Board that he had built the road and maintained the drainage pipe. Because of the construction equipment and trucks, they had destroyed the pipe and Mr. Spokas felt they should be required to repair it. He stated that Barlows had scraped the gravel off the road in order to widen it as the easement was not made for heavy traffic. Mr. Spokas stated that the last winter with all the freezing and thrawing had caused a loblolly. Mr. Spokas stated that if the Board granted the requested variance, they would be imposing a hardship on him solely for the benefit of the applicant.

Mr. Harold Barlow of Great Falls attempted to speak but Chairman Smith ruled him out of order. Mr. DiGiulian stated that he felt the agent could have the applicant make a statement without it being a problem. Chairman Smith inquired if Barlows owned any of the land at all. Mr. Tim Yockey stated that Mr. Borland was the principal of Barlows and had made a home on lot 9-B. The corporation did not own any part of the land and had no interest in it. Mr. Yockey pointed out that Mr. Spokas' objections to the variance with respect to the easement situation would not infringe upon him. He stated that Mr. Spokas had a right by law to have access to a state road and he indicated that they would not block that roadway. With regard to the statement of damage done, Mr. Yockey stated that he had not seen any damage and he had been to the site. There was a gate going back to the Spokas property. Mr. Yockey stated that he did not think they had endangered the roadway. Chairman Smith inquired if a subcontractor had been hired to do the work but was informed Barlows had done the work. Chairman Smith stated that Barlows might have subcontracted the work. He stated that Mr. Yockey was not there all the time and did not have much control. Mr. Yaremchuk stated that he could imagine why Mr. Spokas had a problem and it was a serious problem. Mr. Yaremchuk inquired as to what if there was a fire on Mr. Spokas' property. Mr. Yaremchuk stated that the roadway could be blocked whether the property was subdivided or not but he did not feel that Barlows had the right to block it. Mr. Yockey replied that they were not blocking the roadway. Mr. Hyland stated that from the pictures, the roadway looked pretty torn up. He inquired as to who maintained the easement. Mr. Yockey replied that Mr. Barlow maintained the easement from Jeffery Road to Mr. Spokas' gate. The front portion of the property had been dedicated to lot 9-A which did not have a house on it. Mr. Hyland inquired as to who owned the property under the easement. Mr. Yockey replied that it was originally owned by the owners of lot 9 which was the Barlows and Horstman. Mr. Hyland inquired as to who the current owner was and was informed it would be the owners of lot 9-A and 9-B. Mr. Yocket stated that lot 9-B was owned by Mr. Borland and lot 9-A was owned by Robert Paul.

068

Chairman Smith read the Design Review comments regarding the proposed variance application: "It should be noted that the easement and common driveway proposed for lot 2A and lot 2B will coincide with an outlet road currently used by Parcel 10. Parcel 10 is 28.5 acres in size. If Parcel 10 were divided into 5 acre lots (outside Subdivision Control), the five resulting lots would also be using this private driveway easement. Equitable maintenance responsibility will be a serious issue." Mr. Hyland inquired as to what right they would be allowed to use it. Mr. Yocket replied that Mr. Spokas had a right to the state highway. He stated that Mr. Spokas did have an access easement to his property. It would go on to each of the subdivided lots.

Chairman Smith closed the public hearing. Mr. Spokas asked to be allowed to speak but was informed he was out of order.

Page 68, August 4, 1981 Board of Zoning Appeals
WILFRED W. & DORIS W. BORLAND, JR.
& BARLOWS, INC.

R E S O L U T I O N

In Application No. V-81-D-128 by WILFRED W. & DORIS W. BORLAND, JR. & BARLOWS, INC. under Section 18-401 of the Zoning Ordinance to allow subdivision into two lots, each of which would have a width of 6.21 ft. (200 ft. min. lot width required by Sect. 3-E06) on property located at 9028 Jeffery Road, tax map reference 8-2((1))9B, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 5.8087 acres.
4. That the applicant's property is a pipestem lot which could cause a hardship with access to adjoining properties and the common driveway for lot 2A and lot 2B would coincide with the outlet road now used by parcel 10 and equitable maintenance responsibility would be a serious issue.

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

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

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

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. DiGiulian)(Mr. Yaremchuk abstaining).

Page 68, August 4, 1981, Reconsideration of
The Charter Foundation

Mr. Hyland asked that the Board reconsider its action in S-81-D-038 and the reason for the reconsideration was a reference to the minutes of the last meeting which had allowed for additional written testimony and oral testimony. Mr. Hyland stated that at the earlier hearing, a motion had been made by Mr. DiGiulian which he had seconded, and that the Chairman had requested that there be a citizen representative present at the next hearing to answer questions. Mr. Hyland stated that the agenda that the Board of Zoning Appeals had for today's meeting had only indicated that it was deferred for additional written testimony and the word "oral" was left off which was the reason the Chairman did not call for witnesses. Accordingly, Mr. Hyland moved that the Board reconsider in order to give the applicant and other witnesses the opportunity to present whatever matters. Mr. DiGiulian seconded the motion for reconsideration and it passed by a vote of 5 to 0.

Mr. Curtis Bradley, citizen representative, informed the Board that he had been upset that he was not allowed to speak at the earlier meeting. He stated that he had extensive remarks but the Board's action had taken steam out of his comments. He informed the Board that the issue he wanted to discuss was financial responsibility which had been touched on at the last hearing. Mr. Bradley stated that the burden was on the applicant to respond to the data. He informed the Board that he had not received the financial statement or hydrological report until 9 o'clock this morning.

With respect to the financial statement, Mr. Bradley stated that the Zoning Ordinance gave the BZA the authority to require the posting of a bond or some guarantee that would insure that the applicant had the financial capability to perform the project. Mr. Bradley stated that he had read the financial statement prepared by the applicant but all it had done was heighten his concern. Mr. Hyland inquired as to how it had heightened the citizens' concern. Mr. Bradley explained that their concern was that if the project was ever started and there was a problem with the financial capabilities, the citizens were afraid of a half-completed school having a negative impact on the community. Mr. Bradley stated that any number of problems could occur and he asked that the applicant be required to provide money up front to guarantee the completion of the project. Mr. Hyland stated that no public venture ever had money up front as they usually obtained a construction loan. Mr. Bradley stated that the applicant was claiming that they would not need a construction loan as they had contributions to accommodate the building project. Mr. Bradley stated that he took exception to this project being considered a public venture as it was not permitted by right. Mr. Bradley stated that conditions should be attached to it that the applicant be able to demonstrate with money in hand or in contributions to a certain financial level. Mr. Hyland inquired as to what financial level the citizens would be satisfied that the applicant could make the project viable. Mr. Bradley stated that he would like the applicant to have $5 million in the bank. Mr. Bradley stated that if the applicant could demonstrate that they had committments from responsible people in the amount of $5 million, the citizens would be satisfied. Mr. Hyland inquired as to what if the applicant had the ability to borrow that amount of funding and Mr. Bradley stated that would also satisfy the citizens.

Mr. Bradley stated that his second condition was to have the County staff review the financial data that was provided by the applicant to the BZA. Mr. Bradley stated that he was taken aback by Mr. Sudda's statement. He stated that his concern was that the first 5½ pages of the report talked about the Directors. Mr. Bradley stated that they did have some fine people involved in this project. On page 6 of the report in the 2nd paragraph, it indicated that they were preparing a market study and a financial plan on the basis of what the Board of Directors would determine the magnitude of construction. Mr. Bradley was outraged that the applicant was just now getting around to doing a market study and a financial plan. He stated that at the present time, the applicant did not know whether they had the ability to put together a project like this.

Mr. Hyland stated that he seemed to recall that some study had been done and he indicated that he would be surprised if the applicant was just starting that effort. Mr. Hyland stated that assuming that the applicant was going to do that study, it could be possible that they had just hired a consultant to put the package together. Mr. Hyland stated that one of the problems he had was that the applicant did not want to commit to much unless the Special Permit was granted. Mr. Bradley stated that as far as the market study, the citizens had not been shown any and he had not seen any other report.

Mr. Bradley's other point was that he had gone through the data and worked up some figures which did not include any fund raising which he had given to Mr. Donnelly earlier in the morning. Mr. Bradley stated that he figured the revenue to be about $630,000. The school would have between 180 to 800 students with $3,500 tuition for each student. Reasonable expenses would be salaries of about $18,000 each for 22 people. If they took out a construction loan, it would be approximately $3.6 million. In addition, they would have a committment for land cost. Mr. Bradley explained that this was why the citizens wanted to see some indication that the applicant had funds to cover any deficit.

Mr. Bradley stated that another condition would be to relocate the well if it impacted adversely on the surrounding wells. Mr. Gordon's report on page 4 stated that the new well was probable and should be relocated. Mr. Bradley asked that all of the conditions he had presented be incorporated into the granting of the special permit as this was a project of great magnitude. Chairman Smith stated that many churches with less money than the present applicant had schools in them and the land magnitude was the same. Chairman Smith stated that the overall cost was just as much if not greater than the present project. He stated that he was not interested in getting the BZA involved in the financial aspects of the project. He stated that if the applicant failed, no other use but a private school could go in there. Chairman Smith stated that the applicant was required by law to do all of the things the citizens had suggested. However, he suggested that the Board stay completely out of bonding and the financial situation of every applicant as it was unjust.

Chairman Smith apologized to Mr. Bradley for inadvertently not allowing him to speak earlier. Apparently, he had not indicated that if there was additional testimony that it could be heard at that time. Mr. Yaremchuk stated that he wanted Mr. Donnelly to respond to Mr. Bradley's comments in order to put everyting to rest.

Mr. Bradley stated that he had one final point. He felt that the language in the Ordinance which permitted the Board to consider matters of this sort and to consider the financial responsibility of the applicant, would not necessarily obligate the Board to consider such matters in every application that came before them. Mr. Bradley stated that he suspected that there were very few non-profit organizations that were proposing a project of this

070

magnitude. He stated that the mere size of the proposed school warranted financial consideration. Chairman Smith stated that he did not see the difference between this application and many others that the Board had heard. He stated that the Board had to base its decision on the land use and the impact and also the welfare of the citizens. Mr. Bradley disagreed with the Chairman as there were a number of citizens who had severe concerns about the project. Mr. Yaremchuk inquired if Mr. Bradley was against the school or the system. Mr. Bradley stated that he was opposed to this school as proposed but was not opposed to the concept of a school.

For the record, Mr. Hyland stated that he was a new member of the Board of Zoning Appeals and this was the first case that he had heard that the issue of finances had ever been raised. No one else had ever raised the question before. He stated that the Board had never asked an applicant before where they were going to get the money. He indicated that he felt it was a most legitimate concern on the part of the citizens. He gave Mr. Bradley credit for taking the position he had and for asking for some sort of guarantee which was not unreasonable. However, he stated again that this was the first time he had ever heard anyone talk about it. Mr. Hyland stated that it had never been raised as an issue before. Mr. Hyland stated that this project involved a combination of talented people who had an idea and were committed to making it work. Mr. Yaremchuk agreed with Mr. Hyland that the issue was legitimate and not unreasonable. However, he stated that asking for the applicant to come up with $5 million up front was unreasonable. Mr. Yaremchuk stated that the applicant would have to go through site planning and put up a bond and a letter of credit from the bank. He stated that they would have the same financial responsibility as anyone else in Fairfax Co. Mr. Yaremchuk stated that he had to agree with the Chairman that the BZA had schools almost the size of the one proposed. Mr. Yaremchuk stated that he was not criticizing Mr. Bradley for raising the financial issue, but he was still not sure how far the BZA could go. Mr. DiGiulian stated that he would not have a problem with a requirement or a condition that there be reasonable proof or evidence that the project was viable. However, he stated that then you got into the argument of what was reasonable evidence. He stated that he would not want to make that a condition of the special permit because you would have to pin it down to what was a reasonable plan. Mr. DiGiulian stated that someone would have to come up with wording that would protect both sides. Mr. Yaremchuk stated that if there was a condition like that in the resolution, the applicant would not be able to get a construction loan. Mr. Hyland suggested that some sort of financial plan be presented to the Zoning Administrator for approval. However, he had a concern that the building permit would be unreasonably held up by such a requirement.

Chairman Smith stated that the Board should stay completely out of the financial responsibility of this organization or any other non-profit organization. During rebuttal, Mr. Donnelly stated that the problem besides the question of being unfair was one of who would be the Judge in determining whether the financial plan was adequate. In addition, he asked how one would write a condition that was not unreasonable. Mr. Donnelly stated that the applicant had submitted the financial statement and stood by it. Mr. Yaremchuk asked for Mr. Donnelly's judgement as to whether this would be a viable project. Mr. Donnelly stated that they were not undertaking any steps unless they were assured that the phase could be completed. Mr. Donnelly stated that this was like the chicken and the egg. The applicant could not get the full committments unless they obtained the special permit.

Mr. Donnelly stated that there were two gentlemen who were very much concerned about the issues, Mr. Frost and Mr. Dawson. Mr. Donnelly advised the Board that the boundary survey with respect to the common property line was in error. He stated that they would correct it and submit a revised plat to the Board the following day. Mr. DiGiulian inquired about the request for the relocation of the wells if it affect the wells on adjoining property. Mr. Donnelly stated that it could be a very complicated matter. In the consultant's report, he had indicated that the well would not adversely affect the neighboring wells. Mr. Donnelly stated that the only way to measure the effect was to test the wells of Windermere and the applicant would not be able to control the test. However, Mr. Donnelly informed Mr. DiGiulian that they did not feel the well would be a problem. In fact, he stated that the school would have less of an impact than if the property were subdivided.

Mr. Bradley attempted to question the well situation but Chairman Smith stated that the applicant was entitled to water rights. He stated that the Board would not get involved in that matter either. The Board had reason to justify the land use and the volume of use. Chairman Smith stated that the school would have less impact on the overall water table than the 30 homes that could be built there. He stated that the water table was dropping all over the United States. However, Chairman Smith stated that he felt the well should be located so as not to adversely affect any wells contiguous to it. Mr. Hyland inquired as to what if it did. Chairman Smith stated that if it was other than a normal water table drop then the citizens had the right to come back to the Board to see what could be done about the well. However, Chairman Smith stated that he did not believe it would ever happen. He stated that someone might have a shallow well. Mr. Yaremchuk stated that the applicant would not be able to dig the well until the Health Department approved the location. Mr. Yaremchuk stated that the Health Department would consider the existing wells.

071

Mr. Hyland stated that in the report from Mr. Donnelly, he had indicated that the well would not adversely affect anyone. Mr. Hyland stated that the well could be relocated. He stated that it was not unreasonable to have the applicant dig another well if after digging the original location it was determined that the water table dropped off. Mr. Donnelly stated that he could not tell the Board for certain whether the applicant would attempt to dig another well. If the applicant dug a well and it did adversely affect the water table, and then they dug another well and it also adversely affected the water table, he asked the Board how many times the applicant should have to drill and relocate. Mr. Donnelly stated that it would be difficult to monitor the test on neighboring wells. Mr. Donnelly stated that it was a can of worms. He stated that it would be possible to relocate the well ten times. What it all came back to was the fact that the applicant could subdivide the property by right. There would be more impact on Windermere if the property was subdivided because then there would be 30 wells. Mr. Donnelly stated that the citizens were talking a great deal about something that had a very slight risk of occurring.

Mr. Yaremchuk stated that the solution to the whole problem was public water. Chairman Smith stated that if he were convinced that this usage would have a greater impact that what was allowed by right, he would be inclined to consider the concerns. He stated that the applicant was entitled to the land.

There was no one else to speak and Chairman Smith closed the reconsideration hearing.

S-81-D-038 R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-D-038 by THE CHARTER FOUNDATION under Section 3-E03 of the Fairfax County Zoning Ordinance to permit private school of general education on property located off of Utterback Store Road, tax map reference 7-3((1))21, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 28, 1981 and deferred until August 4, 1981 for additional written and oral testimony; and

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

1. That the applicant is the contract purchaser.
2. That the present zoning is R-E.
3. That the area of the lot is 67 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.

R E S O L U T I O N

072

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 660 for all three phrases of construction plus necessary staff.
8. The hours of operation shall be 7:30 A.M. to 11:00 P.M.
9. There shall be no student driving, except in extraordinary circumstances as determined by the school.
10. There shall be no pedestrian or vehicular access to the school via Welham Green Road.
11. There shall be no lighting for the athletic fields.
12. There shall be a public bridle trail, in a location to be determined by the school generally along the northern property line of the site, leading to Utterback Store Road.
13. Open space shall be substantially as shown on the plat.
14. The school shall be served by private water and septic systems.

Ms. Day seconded the motion.

The motion passed by a unanimous vote of 5 to 0.

Page 72, August 4, 1981, Scheduled case of

10:20 A.M. FREDERICK W. DAU, III, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport to 7.8 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 4602 Holborn Ave., Chapelwood Subd., 70-1((11))5, Annandale Dist., R-3, 12,013 sq. ft., V-81-A-129.

Mrs. Ann Dau of 4602 Holborn Avenue informed the Board that the enclosure of the existing carport was logical and would be consistent with the existing side line in question. She stated that it would not impact the neighbors and they did not object to the enclosure. Mrs. Dau stated that there was no other location on the property that was acceptable for construction purposes because of the grading of the lot. She stated that they had owned the property for two years. In response to questions from the Board, Mrs. Dau stated that the property dropped off immediately from the carport.

There was no one else to speak in support and no one to speak in opposition.

Page 72, August 4, 1981 Board of Zoning Appeals
FREDERICK W. DAU

R E S O L U T I O N

In Application No. V-81-A-129 by FREDERICK W. DAU, III under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 7.8 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307), on property located at 4602 Holborn Avenue, tax map reference 70-1((11))5, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 12,013 sq. ft.
4. That the applicant's property has exceptional topographic problems.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

RESOLUTION

073

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 73, August 4, 1981, Scheduled case of

10:30 A.M. REBECCA & MICHAEL MIKOLAJCZYK, appl. under Sect. 18-401 of the Ord. to allow construction of a 25 ft. high detached garage 2 ft. from the rear and 6 ft. from the side lot lines (25 ft. min. rear yard & 20 ft. min. side yard req. by Sects. 3-107 & 10-105), located 7500 Idylwood Rd., 40-3((1))12, Providence Dist., R-1, 20,156 sq. ft., V-81-P-130.

Ms. Rebecca Mikolajczyk of 7500 Idlywood Road informed the Board that her property was zoned R-1 and contained 20,156 sq. ft. of land. She stated that her property was lopsided and that the house was located near to the side lot line. Next to the house was where the driveway was located. Ms. Mikolajczyk stated that her kitchen was located at that end of the house and there were not any doors on the other side of the house. She informed the Board that she was in a position of restoring the house to its original condition. It was a carriage house. In response to questions from the Board regarding the height of the proposed garage, Ms. Mikolajczyk stated that the 25 ft. height was requested so that the garage would conform with the house which was a Victorian Carriage House. She stated that the second story of the garage would be used for storage. Mrs. Day inquired if the house had a basement but was informed it was not usable. Mrs. Day inquired as to what was at the rear of the property as there did not seem to be any development. Ms. Mikolajczyk stated there was 40 ft. of greenery as Idylwood Towers was located behind her property. There was 40 ft. of woods and then a parking lot.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-P-130 by REBECCA & MICHAEL MIKOLAJCZYK under Section 18-401 of the Zoning Ordinance to allow construction of a 25 ft. high detached garage 2 ft. from the rear and 6 ft. from the side lot lines (25 ft. minimum rear yard and 20 ft. minimum side yard required by Sects. 3-107 and 10-105) on property located at 7500 Idylwood Road, tax map reference 40-3((1))12, County of Fairfax, Virginia, Mr. Yarecmhuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 20,156 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including very shallow and has exceptional topographic problems.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

D74

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 74, August 4, 1981, Scheduled case of

10:40 A.M. MRS. JAMES B. DOUGHERTY, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of carport into a garage and storage room 9.1 ft. from a side lot line such that total side yard would be 19.1 ft. (8 ft. min. but 20 ft. min. side yard req. by Sect. 3-307), located 10808 Stanhope Pl., Middleridge Subd., 68-3((5)) 237, Annandale Dist., R-3(C), 9,647 sq. ft., V-81-A-131.

Mrs. James Dougherty of 10808 Stanhope Place informed the Board that she wanted to enclose a carport. Their property was narrow and shallow and had a sloping rear yard which necessitated the variance.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-A-131 by MRS. JAMES G. DOUGHERTY under Section 18-401 of the Zoning Ordinance to allow extension and enclosure of carport into a garage and storage room 9.1 ft. from a side lot line such total total side yard would be 19.1 ft. (8 ft. minimum but 20 ft. total minimum side yard required by Sect. 3-307) on property located at 10808 Stanhope Place tax map reference 68-3((5))237, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the onwer of the property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 9,647 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including narrow and shallow and nas exceptional topographic problems, i.e., sloping rear yard.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 75, August 4, 1981, Scheduled case of

10:50 A.M. J. JAROSLAV SUSTAR, appl. under Sect. 18-401 of the Ord. to allow construction of a gazebo in the front yard (such accessory structure req. to be not located in any front yard on such lot by Sect. 10-105), located 3400 Battersea La., Mt. Vernon Subd., 101-4((19))13, Mt. Vernon Dist., R-2, 15,534 sq. ft., V-81-V-132.

075

Mrs. Joyce Sustar of 3400 Battersea Lane in Alexandria informed the Board that she had a letter from the Chairman of the Architectural Control Board of Riverside Estates with regard to the proposed gazebo and he had no objection to it as there was hedge around the property which would screen it. Mrs. Sustar stated that the gazebo would enhance the property. She indicated that her neighbors supported the requested variance.

Chairman Smith inquired as to the justification for the requested variance since the Ordinance prohibited accessory structures in the front yard. Mrs. Sustar replied that her property did not have a back yard but had two front yards. Chairman Smith stated that the gazebo could be constructed in the side yard. Mrs. Sustar stated that the only accessory structures allowed by the Ordinance were statutes and flagpoles. In response to questions from the Board, Mrs. Sustar stated that she had owned the property since December 1st. Mrs. Day inquired if she were aware of the restrictions about a corner lot for accessory structures. Mrs. Sustar stated that the terrain in the front yard dropped 2½ ft. The gazebo would be lost within the trees and would not obstruct anyone's view. She stated that she had a garden on the side so she could not put the gazebo there. The other side of the property sloped down and was all wooded and wild. Mrs. Sustar presented the Board with letters of support from her neighbors.

There was no one else to speak in support and no one to speak in opposition.

Page 75, August 4, 1981 Board of Zoning Appeals
J. JAROSLAV SUSTAR R E S O L U T I O N

Mrs. Day moved that the Board of Zoning Appeals deny the requested variance as the property was a corner lot having two front yards and accessory structures were prohibited in any front yard of less than 36,000 sq. ft. In addition, she stated that a buyer should be aware of these restrictions. The motion failed for lack of a second.

Mr. Yaremchuk offered the following motion:

In Application No. V-81-V-132 by J. JAROSLAV SUSTAR under Section 18-401 of the Zoning Ordinance to allow construction of a gazebo in the front yard (such accessory structure required to be not located in any front yard on such lot by Sect. 10-105) on property located at 3400 Battersea Lane, tax map reference 101-4((19))13, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 15,534 sq. ft.
4. That the applicant's property has exceptional topographic problems and has an unusual condition in that it is a corner lot and does not have a back yard to locate the accessory structure. The proposed location is a good one in that the gazebo would not be visible.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

R E S O L U T I O N

076

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 2 (Ms. Day and Mr. Smith).

Page 76, August 4, 1981, Recess

At 12:25 P.M., the Board recessed for lunch and reconvened at 1:25 P.M. to continue with the scheduled agenda.

//

Page 76, August 4, 1981, Scheduled case of

11:00 A.M. LAWRENCE A. & DORIS V. BLAKE, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 3 ft. from the side and rear lot lines of a corner lot (10 ft. min. side and rear yards req. by Sects. 3-407 & 10-105 and Ord. definition of corner lot) located 2844 Meadow La., Hillwood Subd., 50-4((8))28, Providence Dist., R-4, 5,700 sq. ft., V-81-P-133.

Mr. Lawrence A. Blake of 2844 Meadow Lane in Falls Church informed the Board that the setbacks for his area had changed within the last two years. He stated that he followed the setbacks required for the construction of his detached garage, it would be in the middle of his back yard. He stated that he had a 4 ft. thick tree that would have to be removed which would help him fuelwise. Mr. Blake stated that the placement of the garage in the middle of his back yard would look terrible. He informed the Board that several years, a detached garage could have been built as close as 12" to the lot lines. Mr. Blake stated that he did not want to get that close.

Chairman Smith inquired if Mr. Blake was aware that he would need a front yard variance even if this variance were granted. Mr. Blake stated that when he applied for a building permit he informed the County that he wanted to get as close as 3 ft. to the lot lines. He had been advised that a variance was necessary. Mr. Blake stated that he filed the application and sent out the required notification letters. Chairman Smith stated that the site plan submitted did not show the distance from Westover Street. Apparently, the staff had discovered that it did not meet the setback at the time of the staff report. Mr. Blake stated this his garage would be back beyond the house. Chairman Smith stated that it still would not meet the present setback requirements. Chairman Smith stated that even if the Board granted the variance, another application would have to be filed for the third variance unless the applicant chose to amend the present application. Mr. Blake stated that in all this time, the prices of concrete had doubled. Mr. Blake stated that he worked 18 hours a day and trying to get the paperwork done. Mr. Yaremchuk stated that the Board did not have any choice. Even if the variance were granted, he stated that Mr. Blake would still need another variance before the structure could be legal. Mr. Yaremchuk understood that time was of the essense but he stated the Board's hands were tied. Mr. Blake stated that to amend the application would take two more months. He stated that the error in the application was not made on his part. Chairman Smith stated that the applicant did not show the setback from Westover Street, Apparently, it was discovered too late to advertise the third variance. Chairman Smith inquired of Mr. Covington as to the front setback requirements for the R-4 zone and was informed it was 30 ft. Mr. Blake stated that he had a good 30 ft. of front yard. Chairman Smith referred to the site plan which showed a 10.67 ft. setback and indicated that the front yard in question was not double that distance by any means. He stated that if the plat was correct, the front yard could not be 30 ft. He suggested that the applicant seek a deferral to amend the application and that revised plats be submitted to include the third variance. He stated that the Board could not take any action on the third variance until it was advertised.

Mr. Blake stated that he get a building permit today if he put it in the middle of his back yard. Chairman Smith stated that the problem was with Westover Street. He stated that the applicant could not place the building to meet the setback requirement. Mr. Blake stated that he had gotten approval for the garage. Mr. Blake stated that he was good at judging distances and he had a good 30 ft. from Westover Street. Chairman Smith inquired if the applicant wanted to request a deferral. Mr. Blake stated that he would have to, apparently. Mrs. Day questioned what was located to the right of the proposed garage and was informed it was a double vacant lot. Mrs. Day inquired if it would cause any unsightly disadvantage to the neighbor to the right. Mr. Blake responded that the garage would not block any vision. It was the consensus of the Board to defer the application until September 15, 1981 to allow the applicant to amend the application and submit revised plats.

//

Page 77, August 4, 1981, Scheduled case of

077

11:15 A.M. MR. STANLEY WESTREICH, appl. under Sect. 18-401 of the Ord. to allow construction of a dwelling 12.4 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207), located 6131 Franklin Park Rd., 41-1((1))26A, Dranesville Dist., R-2, 18,939 sq. ft., V-81-D-091. (Deferred from July 7, 1981 for Notices.)

Mr. Charles Reynolds of 7649 Leesburg Pike in Falls Church represented the applicant. He stated that the project had begun in 1977. A plat had been submitted but then the applicant ran into some problems with drainage to the rear of the property. Mr. Reynolds stated that they spent a year working on the drainage problems and finally got the property subdivided into two parcels. After the subdivision was recorded, it was brought to their attention that a 15 ft. distance was required from the edge of a floodplain line. Mr. Reynolds stated that previously construction could go right on the floodplain line as long as the structure was 18" above the floodplain line. Mr. Reynolds informed the Board that the property was unusable without a variance since the house could not be constructed. Mr. Reynolds informed the Board that the 12.4 setback only occurred at one location. He stated that the house did not fit the property unless they had the use of the 15 ft. There was a topographic problem as well since the property dropped 15 ft. from the road to the back of the house. Mr. Reynolds informed the Board that this was an old neighborhood. Many of the homes were located close to the road.

There was no one else to speak in support of the application and no one to speak in opposition. However, the Board was in receipt of a letter from Mr. Horstein which had been received by messenger during the Board's recess. The Chairman read it into the record.

Page 77, August 4, 1981 Board of Zoning Appeals
MR. STANLEY WESTREICH

RESOLUTION

In Application No. V-81-D-091 by STANLEY WESTREICH under Section 18-401 of the Zoning Ordinance to allow construction of dwelling 12.4 ft. from front lot line (35 ft. minimum front yard required by Sect. 3-207) on property located at 6131 Franklin Park Road, tax map reference 41-1((1))26A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981 being deferred from July 7, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 18,939 sq. ft.
4. That the applicant's property has exceptional topographic problems and has an unusual condition of floodplain and an easement that occupies a little better than half of the property. And, further, construction has to set back 15 ft. from a floodplain line which necessitates a variance from the front property line.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 78, August 4, 1981, Scheduled case of

11:30 A.M. THANG & DIEP KHAC, TUAN TRAN & KIM NGUYEN AND PATHWAY HOMES, INC., appl. under Sect. 18-401 of the Ord. to allow enclosure of carport for use as a utility room 6 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), located 6215 Pioneer Dr., Springfield Estates Subd., 80-4((5))(10)4, Lee Dist., R-4, 9,120 sq. ft., V-81-L-134.

078

Mr. Paul Kilner of 2810 Dorr Avenue in Fairfax informed the Board that Pathway Homes was the contract purchaser for the property located at 6215 Pioneer Drive. They were seeking a variance in order to enclose an existing carport for use as a utility room which was only located 6 ft. from the side lot line. Mr. Kilner stated that enclosure of the carport would increase the amount of living space within the home and increase the value of the home and the neighborhood. He stated that there was foliage on the property and they did not feel that the enclosure would interfere in any way with the neighbors. According to Mr. Kilner quite a few of the homes in the area had enclosed carports.

Mr. Hyland inquired as to the justification for the variance. Mr. Kilner stated that the setback requirement was 10 ft. and the carport was 4 ft. short of that requirement. Mr. Hyland inquired as to what was on lot 3 to the south of the carport and what distance it would be from the proposed utility room. Mr. Kilner stated that there was a structure on lot 3 which was about 15 to 20 ft. from the property line. He indicated that there would be approximately 21 ft. between the two structures. Mr. Hyland inquired as to the purpose of the utility room and was informed it would be a laundry room and an entrance to the house to keep the rug from becoming dirty.

There was no one else to speak in support and no one to speak in opposition.

Page 78, August 4, 1981 Board of Zoning Appeals
THANG & DIEP KHAC, TUAN TRAN & KIM NGUYEN
AND PATHWAY HOMES, INC.

R E S O L U T I O N

In Application No. V-81-L-134 by THANG & DIEP KHAC, TUAN TRAN & KIM NGUYEN AND PATHWAY HOMES INC. under Section 18-401 of the Zoning Ordinance to allow enclosure of carport for use as a utility room 6 ft. from side lot line (10 ft. minimum side yard required by Sect. 3-407) on property located at 6215 Pioneer Drive, tax map reference 80-4((5))(10)4, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 9,120 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing building on the subject property and the enclosure of the carport would not come any closer to the side lot line than a portion of the existing driveway and there is no objection from the neighbors.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 79, August 4, 1981, Scheduled case of

11:40 A.M. TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD., appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8657 White Beech Way, Westwood Forest Subd., 39-1((19))(2)1, Providence Dist., PDH-3, 10,000 sq. ft., V-81-P-135.

079

Mr. Chip Paciulli of 307 Maple Avenue in Vienna represented the applicant. He stated that the subject lot had an unusual condition in that the Department of Environment Management would not allow the lots to front on Trap Road. What was acually a rear yard was defined by the Zoning Ordinance as a front yard. Mr. Paciulli stated that if Trap Road was a major thoroughfare, it would be a rear yard. But because Trap Road was a collector street, it was also considered a front yard. Ms. Day questioned the staff report. Mr. Paciulli stated that the applicant was in compliance with Sect. 2-205 of the Design Review Comments. He stated that there would be adequate sight distance.

Chairman Smith inquired as to the justification for the variance. Mr. Paciulli stated that there were unusual physical conditions when DEM required them not to use that area of the property as a back yard. Mr. Paciulli stated that there was not any traffic on Trap Road. He stated that the houses faced into the subdivision itself and not on Trap Road. Mr. Paciulli stated that DEM had requested the subdivision be built in this manner and the Zoning Ordinance defined it as a front yard. Mr. Yaremchuk stated that DEM could not have prevented the lots from accessing on Wolf Trap Road. He stated that the applicant could have had the access if he wanted it. Mr. Yaremchuk stated that the County staff had persuaded the applicant do subdivide in this manner. The applicant had cooperated with the staff and now they needed some privacy for the back yards. Mr. Yaremchuk stated that his arrangement was a much better control of traffic. From a planning point of view, it was a good arrangement.

There was no one else to speak in support and no one to speak in opposition of the request.

Page 79, August 4, 1981 Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.

R E S O L U T I O N

In Application No. V-81-P-135 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8657 White Beech Way, tax map reference 39-1((19))(2)1, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 10,000 sq. ft.
4. That the applicant's property has an unusual condition in the location of the proposed building on the subject property and that in planning the house location the rear yard faces Wolftrap Road making fencing necessary for privacy.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 80, August 4, 1981, Scheduled case of

080

11:45 A.M. TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD., appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 inc. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8655 White Beech Way, Westwood Forest Subd., 39-1((19))(2)2, Providence Dist., PDH-3, 9,000 sq. ft., V-81-P-136.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna informed the Board that the same justification for the previous case existed for this variance also. The conditions were the same for the whole group of lots. The subdivision had been laid out in accordance with the County's planning that the lots not access Wolf Trap Road. According to the Zoning Ordinance, what the applicant considered to be a back yard was in reality a front yard. Mr. Paciulli stated that the fence was being requested to provide privacy for the lots along Wolf Trap Road.

There was no one else to speak in support and no one to speak in opposition.

Page 80, August 4, 1981 ,Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.
RESOLUTION

In Application No. V-81-P-136 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 inc. high decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8655 White Beech Way, tax map reference 39-1((19))(2)2, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 9,000 sq. ft.
4. That the applicant's property has an unusual condition in that the lot actually has two front yards caused by the request of the County to have vehicular access to a road in the development other than Wolftrap Road.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 80, August 4, 1981, Scheduled case of

11:50 A.M. TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8653 White Beech Way, Westwood Forest Subd., 39-1((19))(2)3, Providence Dist., PDH-3, 8,500 sq. ft., V-81-P-137.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna represented the applicant. He stated that the justification for this request was the same as in case no. V-81-P-135. Because of a definition in the Ordinance, what he considered to be a back yard was in actuality a front yard. This particular lot had two front yards because of a requirement by DEM not to access the property from Wolf Trap Road. In order to afford the future residents some privacy, the developer was proposing to construct a fence along the "back" of Wolftrap Road.

Page 81, August 4, 1981
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.
(continued)

D81

There was no one else to speak in support of the application and no one to speak in opposition.

Page 81, August 4, 1981 Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.

R E S O L U T I O N

In Application No. V-81-P-137 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 in. decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8653 White Beech Way, tax map reference 39-1((19))(2)3, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH.
3. The area of the lot is 8,500 sq. f.t
4. That the applicant's property has an unusual condition by having two front yards as the County required traffic control since Wolftrap Road was a major thoroughfare.

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

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

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

1. This approval is granted for the location and the specific structures indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 81, August 4, 1981, Scheduled case of

11:55 A.M. TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD., appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8651 White Beech Way, Westwood Forest Subd., 39-1((19))(2)4, Providence Dist., PDH-3, 11,250 sq. ft., V-81-P-138.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna informed the Board that this variance was the same as the others in so far as the justification. DEM had requested the applicant not to access the subdivision from Wolftrap Road. Accordingly, the developer faced the houses towards the interior of the subdivision. The lots along Wolftrap Road were considered to have two front yards because of the definition in the Zoning Ordinance. In order to afford privacy in the "back" yards of these residences, the applicant was requesting permission to construct a privacy fence.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 81, August 4, 1981 Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.

R E S O L U T I O N

In Application No. V-81-P-138 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8651 White Beech Way,

082

tax map reference 39-1((19))(2)4, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 11,250 sq. ft.
4. That the applicant's property has an unusual condition with two front yards as a result of Wolftrap Road which was considered to be a front yard and that the proper use of the property would be to allow the fence in what is normally a rear yard.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 82, August 4, 1981, Scheduled case of

12:00 NOON — TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD., appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8703 Coldstream Pl., Westwood Forest Subd., 39-1((19))(2)26, Providence Dist., PDH-3, 13,000 sq. ft., V-81-P-139.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna informed the BZA that this subdivision had an unusual condition in that DEM had not allowed access to the individual lots from Wolftrap Road but from the interior street. Accordingly, the lots along Wolftrap had two front yards because of the definition of the Zoning Ordinance. In order to afford privacy for the individual homeowner, the developer wished to build a privacy fence along Wolftrap Road.

There was no one else to speak in support and no one to speak in opposition.

Page 82, August 4, 1981 Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.
R E S O L U T I O N

In Application No. V-81-P-139 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8703 Coldstream Place, tax map reference 39-1((19))(2)26, County of Fairfax, Virginia, Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

083

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 13,000 sq. ft.
4. That the applicant's property has an unusual condition having two front yards and that the rear yard faces Wolftrap Road and that the entrance will be on the true front on Rt. 123 and a fence is necessary for privacy.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 83, August 4, 1981, Scheduled case of

12:05 P.M. TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD., appl. under Sect. 18-401 of the Ord. to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. max. height req. by Sect. 10-105), located 8701 Coldstream Pl., Westwood Forest Subd., 39-1((19))(2)27, Providence Dist., PDH-3, 10,250 sq. ft., V-81-P-140.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna represented the applicant. He stated that the hardship which justified the granting of this variance was because of a definition in the Zoning Ordinance which technically gave each lot along Wolftrap Road two front yard requirements. The lots were considered to have two fronts even though access was not permitted from Wolftrap Road but only from the interior street in the subdivision. The builder wished to afford privacy for the "back" of each of these lots and was seeking a variance in order to construct a 6 ft. 6 in. high privacy fence.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 83, August 4, 1981 Board of Zoning Appeals
TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD.
V-81-P-140 R E S O L U T I O N

In Application No. V-81-P-140 by TRIANGLE DEVELOPMENT COMPANY OF AMERICA, LTD. under Section 18-401 of the Zoning Ordinance to allow 6 ft. 6 in. high decorative fence in the front yard (4 ft. maximum height required by Sect. 10-105) on property located at 8701 Coldstream Place, tax map reference 39-1((19))(2)27, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 10,250 sq. ft.
4. That the applicant's property has an unusual condition in that the lot has two front yards as a result of Fairfax County's requirement for vehicular access to a road other than Wolftrap Road.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 84, August 4, 1981, Scheduled case of

12:10 P.M. RAY J. ARNOLD, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of carport into a garage 6.4 ft. from side lot line such total side yard would be 15.9 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 7114 Hundsford La., Rolling Valley Subd., 89-3((6))174, Springfield Dist., R-3(C), 8,403 sq. ft., V-81-S-141.

Mr. Ray Arnold of 7115 Hundsford Lane informed the Board that his lot was irregular in shape with converging lot lines. He stated that he was seeking a variance from the 8 ft. minimum with a total of 20 ft. overall minimum side yard requirement. Mr. Arnold stated that because his lot was irregular in shape and had converging lot lines, it was not possible to enclose the existing carport without the variance. He stated that there was not any other place that he could build and still utilize the carport.

There was no one else to speak in support and no one to speak in opposition to the request.

Page 84, August 4, 1981 Board of Zoning Appeals
RAY J. ARNOLD

R E S O L U T I O N

In Application No. V-81-S-141 by RAY J. ARNOLD under Section 18-401 of the Zoning Ordinance to allow extension and enclosure of carport into a garage 6.4 ft. from side lot line such that total side yard would be 15.9 ft. (8 ft. minimum but 20 ft. total minimum side yard required by Sect. 3-307) on property located at 7114 Hundsford Lane, tax map reference 89-3((6))174, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 8,403 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and the proposed location would be the only logical area for construction being adjacent to the house.

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

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

RESOLUTION

085

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being out of the room).

Page 85, August 4, 1981, Scheduled case of

12:20 P.M. JOHN B. & DIANE N. PICKETT, appl. under Sect. 18-401 of the Ord. to allow enclosure of a carport 8.0 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 2508 Lisbon La., Milway Meadows Subd., 93-3((2))(1)4, Mt. Vernon Dist., R-3, 10,726 sq. ft., V-81-V-142.

Mr. John Pickett of 2508 Lisbon Lane in Alexandria informed the Board that he had decided to enclose his carport for additional storage and for general security of the items stored in addition to the problem of inclement weather. Mr. Pickett stated that the proposed garage would be a sizable one. He informed the Board that most of the homes in his area had double or single car garages. For those reasons, he was seeking a variance to allow the enclosure of the existing carport as it would not harm the neighborhood. In response to questions from the Board, Mr. Pickett stated that this was the only location on his property that he could construct a garage.

There was no one else to speak in support and no one to speak in opposition.

Page 85, August 4, 1981 Board of Zoning Appeals
JOHN B. & DIANE N. PICKETT

RESOLUTION

In Application No. V-81-V-142 by JOHN B. & DIANE N. PICKETT under Section 18-401 of the Zoning Ordinance to allow enclosure of a carport 8.0 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307), on property located at 2508 Lisbon Lane, tax map reference 93-3((2))(1)4, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,726 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and the enclosure of the carport would not come any closer to the side lot line than the existing structure.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

R E S O L U T I O N

086

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 86, August 4, 1981, Scheduled case of

12:30 P.M. GOOD SHEPHERD LUTHERAN CHURCH, appl. under Sect. 6-303 of the Ord. to permit nursery school on property located at 1516 Moorings Dr., Reston Subd., 17-2((23)) 1, Centreville Dist., PRC, 2.1804 ac., S-81-C-046.

Mr. Joy Mallonee of 2268 Cedar Cove Court in Reston represented the church. She informed the Board that the church wished to establish a Christian pre-school using the existing facilities to accommodate a maximum of 80 children, ages 3 and 4. The school would operate between 9 and 12 each weekday. There would be six teachers and a director. Chairman Smith stated that it would be wise to issue the permit for a four hour period to allow the teachers time to arrive and depart. Mrs. Day inquired about the lease but a lease was not necessary.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Ms. Day made the following motion:

WHEREAS, Application No. S-81-C-046 by GOOD SHEPHERD LUTHERAN CHURCH under Section 6-303 of the Fairfax County Zoning Ordinance to permit nursery school on property on property located at 1516 Moorings Drive, tax map reference 17-2((23))1; County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on August 4, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is PRC.
3. That the area of the lot is 2.1804 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineerting details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 80, ages 3 through 4 years.
8. The hours of operation shall be 9 A.M. to 12 Noon, Monday through Friday.
9. The number of teachers shall be six and one Director.

Mr. Hyland seconded the motion.

The motion passed by a vote of 5 to 0.

Page 87, August 4, 1981, Scheduled case of

12:45 P.M. NANCY LEE SHAW, appl. under Sect. 3-403 of the Ord. to permit home professional office (myotherapy), located 7146 Layton Dr., Loisdale Estates Subd., 90-4((6))2, Lee Dist., R-4, 8,750 sq. ft., S-81-L-047.

Ms. Nancy Lee Shaw of 7146 Layton Drive in Springfield informed the BZA that she was a myotherapist. She stated that myotherapy was a recognized medical therapy technique involving pressure on trigger point ares in the muscle to relieve muscle spasms which then relieved pain. She stated that the technique required two years of schooling before being certified. Ms. Shaw informed the Board that she was certified. There were only 28 certified therapists in the United States. Ms. Shaw stated that she would be the sole employee of the clinic she proposed to establish. Because of the nature of the therapy, she indicated that she would only work on a maximum of four patients a day, two in the morning and two in the afternoon. There would be at least a 45 minute interim between patients. With respect to the traffic situation, there would only be one car at a time with ample parking available in the driveway. Ms. Shaw stated that she would not have more than four patients per day because there was no other certified therapist who would be able to join in her practice.

Ms. Shaw stated that due to the small amount of space required for the operation and the number of patients, it was more practical financial wise and space wise to establish the clinic in her home. In response to Chairman Smith, Ms. Shaw stated that she was not employed by a hospital or clinic. She further stated that she did not own the property at 7146 Layton Drive but rented it from the Lambreths. Chairman Smith inquired if the Lambreths lived at the residence also but was informed they lived in Annandale. Chairman Smith stated that the lease was only a partial sub-lease and inquired if the applicant leased the entire property. Ms. Shaw responded that she had a roommate who worked in Lorton. She stated that she would only lease two rooms for the clinic. Chairman Smith inquired if the roommate was listed on the lease and Ms. Shaw replied she was. Chairman Smith inquired if Ms. Shaw had ever practiced anywhere else and was informed she had not. She stated that each therapist had to get individual state licenses as they established practices in the different areas. Mrs. Day inquired if Ms. Shaw was licensed by the State of Virginia. Ms. Shaw stated that she had applied for the license but the State was awaiting approval of her office location before issuing the state license. Chairman Smith inquired if the State had held up the license awaiting the results of the BZA hearing and Ms. Shaw stated that was correct. Chairman Smith inquired if there were any other myotherapists registered in the State of Virginia and was informed there were none. Ms. Shaw stated that most of the therapists were licensed in the State of Massachusetts. Chairman Smith indicated that perhaps the State of Virginia did not have the provisions for such a license. Ms. Shaw stated that myotherapy was a separate field that was similar to a nurse or therapist.

Mrs. Day inquired if Ms. Shaw had the proper equipment in order to practice her profession. Ms. Shaw stated that the only equipment necessary was a treatment table. The technique involved pressure on trigger points in the muscle. Pressure was applied by the myotherapist. Ms. Shaw stated that she attended a school in Massachusetts to acquire the skill. Mr. DiGiulian inquired as to the terms of the lease and was informed it was a one year lease. Ms. Shaw informed the Board that there was concern about her operation from the citizens in the area. Accordingly, she asked the Board to only grant a limited or restricted permit for a six month period so that she could locate in another area. Ms. Shaw stated there was no need for her to advertise externally so that it would eliminate another of the neighbors' concerns. Mr. Hyland inquired as to how Ms. Shaw would obtain clients. She indicated that patients would be referred to her from Massachusetts. Chairman Smith inquired as to the number of persons to be employed but Ms. Shaw responded that no one could assist her as this was a licensed or certified profession. She stated that she would only have one patient at a time. The patient would be scheduled for an hour and it would take at least an hour or more for the paperwork involved. Ms. Shaw stated that she would have to mark a muscle scan or chart of the patient. Chairman Smith inquired if any type of therapy involving heat or a hot tub or tank would be involved but Ms. Shaw stated it would not.

Mr. Yaremchuk inquired as to how Ms. Shaw came to locate at this area. Ms. Shaw stated that she had previously resided in Falls Church. She had searched for a house that would have ample room for living and an office of this type. She informed the Board that she had found the house through the newspaper. Mr. Yaremchuk inquired if it would not be better to locate the clinic in an office building. Ms. Shaw replied that she was the only therapist that would be involved in the business. She stated that she only needed a small room. She

088

stated that she could not afford the office space in Fairfax County and it would have more room than was necessary. Ms. Shaw stated that she would be the only therapist involved and therefore there would not be any expansion of the business. Mr. Yaremchuk stated that he was concerned about the request only because the house was located deep within the subdivision. He asked how the patients would be able to find the office. Ms. Shaw responded that Layton Drive was the first residential drive off of Loisdale Drive.

There was no one else to speak in support of the application. The following persons spoke in opposition. Mr. George Turner of 7148 Layton Drive informed the Board that his concern was one of investment. He stated that he had invested his money into his home as a secure place for his children to play. Now someone with no investment was trying to change the community. Mr. Turner advised the BZA that the community was strongly opposed to the special permit request. He stated that the concerns were of the change to the integrity for future investors. He stated that this request would lower the value of the community. Mr. Turner stated that he wanted to keep other potential businesses out of the community. Mr. Turner stated that there were plans to construct professional buildings nearby in Springfield. He asked the Board's cooperation in maintaining the community.

Mr. Hyland questions Mr. Turner as to how this proposed use would change the integrity of the residential community or affect the children in the area. Mr. Turner responded that once a business was allowed into the area, it would open the door to other businesses. He stated that the integrity would be changed because investors would purchase homes and use them for other than residential purposes. Mr. Turner stated that there would not be any guarantee as to the types of people coming into the community or the number of cars that would be coming to the proposed facility. He stated that because the business would be open to the public, people would come and wait in line for the service. Mr. Hyland stated that he understood one of the concerns was that the applicant did not own the property but was only the renter.

The next speaker in opposition was Harold Price of 7309 Loisdale Road. He informed the Board that he was President of the Loisdale Civic Association. He presented the Board with a petition signed by 59 households within Layton and Ruskin. In addition, he stated that he had received numerous phone calls from the citizens in the area. The concern was that for years the Loisdale community has been impacted by the growth in the surrounding area. He stated that they were trying to stay a residential neighborhood. The citizens saw the application as a problem. He stated that the citizens wanted to be able to go home and relax after work. They did not want an office established even if it were a small clinic as there were no controls once a license has been issued. Mr. Price had questions about inspections. The profession was something new. Mr. Price stated that the citizens felt that Loisdale should remain a residential community. There was concern throughout the area because all the streets would be impacted by the proposed use.

Mr. Hyland inquired as to the traffic impact to be generated by four cars a day. Mr. Price stated that Layton Drive was very narrow and cars parked on both sides of the street leaving room for one car. He stated that the VDH&T would not improve the road. The citizens were concerned for the safety of their children who played at the dead-end street. Mr. Price stated that the subject property was down the street from the cul-de-sac. The citizens were concerned as they could not control the traffic situation. In addition, he stated that this would be a money making operation. Mr. Hyland inquired as to the citizens' objections if the use were limited to four patients and the permit issued for Ms. Shaw as sole practitioner. He stated that she could not handle more patients because of the nature of the business. He asked for the position of the citizens if these controls were placed on the permit. Mr. Price stated that the position would be the same as before.

The next speaker in opposition was Nicholas Yanowski of 7145 Layton Drive. He stated that he had lived in the area for 24 years. He stated that having a business in the community would escalate more businesses trying to come into the community. He stated that no one had ever attempted to penetrate the center of the community previously. He informed the Board that he was strongly opposed to the request and each and every neighbor was also opposed to it. Mr. Yanowski stated that the proposed home already had a lot of traffic coming and going all the time. He stated that visitors to the property parked in front of his house all the time. Mr. Yanowski stated that the property was only 70 ft. wide. It was located in the middle of the block. He requested the BZA to deny the application.

Chairman Smith inquired if Mr. Yanowski had reported the parking and activity at the house to the Zoning Enforcement Division. Mr. Yanowski stated that he had talked to Mr. Don Beaver who stated that the office would have to issue a 30 day notice if there was a violation and since the BZA hearing was coming up, there would not be any purpose in it. Mr. Hyland inquired if there had been determination that Ms. Shaw was already practicing at the location. Mr. Yanowski stated that Ms. Shaw had stated that she was keeping records of the patients. He stated that he saw cars coming and going when he was home for a few days. He stated that he saw cars on a regular basis. He indicated that he did not know whether she was practicing yet. Mr. Yanowski stated that one of the cars leaving the property had backed up and hit his fender as the street was very narrow. Chairman Smith stated that Loisdale was an old subdivision without curbs or gutters. Mr. DiGiulian stated that the

subdivision had curbs and gutters but the streets were narrow. There were sidewalks in the subdivision for the children, etc.

The next speaker in opposition was Mrs. Bobbie Mae Johnson who stated that if there were not any exterior indication that a business was being practiced at that location, people coming to the facility would not be able to find it as they were not familiar with the area. They would be driving all over the community. Mrs. Johnson stated that she was also concerned about establishing a precedent for the community. Office space was expensive and there were a number of people who might wish to establish an office in this area.

There was no one else to speak in opposition. During rebuttal, Ms. Shaw stated that the staff report had indicated that this proposal would not have an adverse impact to the area. Parking would not be a problem as it would be limited to the driveway. The patients would be from Massachusetts and would be referred by doctors. She stated that she could not treat them unless there was a referral. Ms. Shaw stated that a doctor was associated with the myotherapy. With regard to the external advertising, she stated that when she gave friends directions to the house, they managed to find her without any trouble. Ms. Shaw stated that she did not wish to antagonize the neighborhood. She asked the Board to consider a limited special permit to allow her to start the practice. She indicated that it would not establish a precedent for any long term business or operation. Ms. Shaw stated that she had only practiced her profession on a couple of friends. The car that hit Mr. Yanowski had not been someone from their property.

Mr. DiGiulian stated that he was going to make a motion to deny the special permit because the street in front of the house was very crowded with parked cars. However, he stated that his main reason for seeking a denial was because this house was located back in the subdivision. If the house were located out on Loisdale or at one end of the subdivision, the application would have merit.

Page 89, August 4, 1981 Board of Zoning Appeals
NANCY LEE SHAW

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-L-047 by NANCY LEE SHAW under Section 3-403 of the Fairfax County Zoning Ordinance to permit home professional office (myotherapy) on property located at 7146 Layton Drive, tax map reference 90-4((6))2, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on August 4, 1981; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-4.
3. That the area of the lot is 8,750 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Hyland).

Page 89, August 4, 1981, Scheduled case of

1:00 P.M. THE LEARNING WORKSHOP, INC., appl. under Sect. 3-203 of the Ord. to amend S-291-77 for school of general education (tutoring) to permit continuation of the use beyond its present term, which ends Dec. 6, 1981, located 1326 Calder Rd., 30-2((13))11, 12 & 13, Dranesville Dist., R-2, 2.838 ac., S-81-D-048.

Ms. Jane Greenstein represented the applicant. She requested the Board to grant the special permit to allow the use to be continued.She stated that the school was an after school operation to tutor students for special learning disabilities. Ms. Greenstein stated that a copy of the lease with the church was contained in the file.

There was no one to speak in support or in opposition to the request.

RESOLUTION

090

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-D-048 by THE LEARNING WORKSHOP, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-291-77 for school of general education (tutoring) to permit continuation of the use beyond its persent term which ends December 6, 1981 on property located at 1326 Calder Road, tax map reference 30-2((13))11, 12 & 13, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on July 30, 1981; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-2.
3. That the area of the lot is 2.838 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plats submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit) shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS BOTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 30, ages 7 through 20.
8. The hours of operation shall be 8:00 A.M. to 8:00 P.M., Monday through Friday.
9. This special permit shall run continously from the expiration date of December 6, 1981 providing that the applicant furnishes the Board with a copy of a valid lease on an annual basis. The current lease will expire in June 1982.

Mr. Hyland seconded the motion.

The motion passed by a vote of 5 to 0.

Page 80, August 4, 1981, Scheduled case of

1:15 P.M. ST. TIMOTHY CATHOLIC CHURCH OF THE ARLINGTON DIOCESE, appl. under Sect. 3-103 of the Ord. to amend S-80-S-015 for a church to permit a school of general education in existing church facilities, located 13807 Poplar Tree Rd., 44-4 ((1))8, Springfield Dist., R-1, 18.1680 ac., S-81-D-049.

Mr. Grady Carlson, an attorney at law, located at 4069 Chain Bridge Road in Fairfax, represented the church. He stated that they were requesting an amendment to an existing special permit which was granted by the BZA the previous April. The permit was to allow a parochial school. Mr. Carlson informed the Board that no other construction was proposed at this time. The sanctuary and rectory were built in 1978. On April 15th, the BZA had voted to permit the religious education parish hall for a multi-purpose hall to be constructed. At that time, the only use contemplated had been religious education in the afternoon and on

091

Sunday afternoons. Now, the church wanted to make use of the building and hold classes from 8:30 A.M. until 3:00 P.M. from Monday through Friday for 250 students from kindergarten to 8th grade. There would be 8 to 9 teachers with one principal. Mr. Carlson stated that the first year of operation would have less than 250 students but the maximum number for the future would be 250 students. Mr. Carlson stated that the facility would have a positive impact on the neighborhood. The building to be used was located at the back of the existing developed property. The school would use four buses.

There was no one else to speak in support or in opposition.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-D-049 by ST. TIMOTHY CATHOLIC CHURCH OF THE ARLINGTON DIOCESE under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-80-S-015 for a church to permit a school of general education in existing church facilities on property located at 13807 Poplar Tree Road, tax map reference 44-4((1))8, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on August 4, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 18.1680 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with the Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 250.
8. The hours of operation shall be 8:30 A.M. to 3:00 P.M., Monday through Friday.
9. The number of teachers shall be 8.

Ms. Day seconded the motion.

The motion passed by a vote of 5 to 0.

Page 92, August 4, 1981, Scheduled case of

1:30 P.M. KINGS PARK WEST ASSOCIATES, appl. under Sect. 3-2003 of the Ord. to permit community swimming pool and related facilities, located off of Roberts Rd., Kings Park West Subd., 68-2((1))pt. 43, Annandale Dist., R-20, 3.52 as., S-81-A-050.

092

Mr. Russell Rosenberg of 9401 Lee Highway, Circle Towers, Fairfax, represented the applicants. He informed the BZA that the application was for a special permit for a community swimming pool and a bathhouse in a future subdivision of Kings Park West. Mr. Rosenberg stated that only two sections had been subdivided to date. The location of the pool was in the same area as was shown on the development plan at the time of the rezoning. The property was zoned R-20 but was only developed into six units per acre. Mr. Rosenberg stated that 220 units would be served by the facility. The hours of operation for the pool would be 7 A.M. to 9 P.M. The access would be off of the future Roberts Road and Braddock Road. The pool was 2800 sq. ft. plus an infant pool. Parking would be provided for 18 vehicles as many of the units were within walking distance. The bathouse was 1100 sq. ft. and was in a colonial or traditional architectural design. Mr. Rosenberg stated that the special permit proposal was in harmony with the Comprehensive Plan and had been approved at the time of the rezoning application.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 92, August 4, 1981 Board of Zoning Appeals
KINGS PARK WEST ASSOCIATES

R E S O L U T I O N

Ms. Day made the following motion:

WHEREAS, Application No. S-81-A-050 by KINGS PARK WEST ASSOCIATES under Section 3-2003 of the Fairfax County Zoning Ordinance to permit community swimming pool and related facilities on property located off of Roberts Road, tax map reference 68-2((1))pt. 43, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on August 4, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-20.
3. That the area of the lot is 3.52 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of memberships shall be 270.

RESOLUTION

093

8. The hours of operation shall be 7 A.M. to 9 P.M.
9. The number of parking spaces shall be 18 on this site.
10. Unless otherwise qualified herein, extended-hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:
(A) Limited to six (6) per season.
(B) Limited to Friday, Saturday and pre-holiday evenings.
(C) Shall not extend beyond 12:00 midnight.
(D) Shall request at least 10 days in advance and receive prior written permission from the Zoning Administrator for each individual party.
(E) Requests shall be approved for only one (1) such party at a time, and such requests will be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.
(F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
(G) Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

Mr. Hyland seconded the motion.

The motion passed by a vote of 5 to 0.

Page 93, August 4, 1981, Scheduled case of

1:45 P.M. PROVIDENCE SAVINGS & LOAN ASSOC., appl. under Sect. 18-401 of the Ord. to allow resub. of five (5) lots and part of road r.o.w. into six (6) lots and part of r.o.w. with proposed lot 4-A having width of 37 ft. (150 ft. min. lot width req. by Sect. 3-106), located 2900, 2901, 2903, 2904 & 2905 Taj Drive, The Taj Subd., 36-1((19))2, 3, 4, 5 & 6, Centreville Dist., R-1, 6.11 ac., V-81-D-143.

Mr. Bernard Fagelson represented the applicant. Mr. Chip Paciulli represented the engineering firm. Mr. Fagelson informed the BZA that the application was a variance request for a resubdivision of 6 lots from 5 lots. Mr. Fagelson stated that the hardship was brought about by a chain of events when Providence Savings & Loan Association was forced to take back the property from the previous builder. There were bonding problems. Mr. Fagelson informed the Board that the property was oddly-shaped in that the lot was a pan handle. In addition, the property had topographical problems. The lot to the east was high and went into a small swale. The developed road was in a low area. There was a small pond to the west of the cul-de-sac. The extension of the road and the extension of the cul-de-sac would be difficult. The County preferred that the developer maintain the present location.

Mr. Chip Paciulli of 307 Maple Avenue West in Vienna showed the Board a sketch that under the present Ordinance would allow the resubdivision into eight lots. Mr. Paciulli stated that it was allowed with the extension of the cul-de-sac into the pond area and the swale area. As the street presently existed, it would be necessary to dress up the shoulders and the ditch lines and scrape off the top layer of gravel and to asphalt the road. Mr. Paciulli stated that this procedure would allow for minimal impact on any downstream properties caused by any additional runoff during the construction of the extension of the cul-de-sac.

There was no one else to speak in support of the application. Mr. Fredric De Cinti of 2908 Taj Drive spoke in opposition to the request. He informed the Board that he was the owner of lot #1 and felt that the creation of the extra lot in the subdivision would increase the density and bring the property values down. Chairman Smith explained to Mr. De Cinti that the applicant was only asking for a different arrangement of the lots and had the right to develop the property. The variance would only narrow the frontage requirement. He stated that the lots could be subdivided by right. Chairman Smith stated that the density was not being exceeded as it was allowed by the Ordinance. Mr. De Cinti argued that the lot would be narrowed. Chairman Smith stated that the right-of-way would part of the existing road. Mr. De Cinti stated that the subdivision had been established for a certain number of lots and he was requesting that it be kept that way.

During rebuttal, Mr. Fagelson informed the Board that Mr. De Cinti had a problem with the previous builder. Mr. Fagelson stated that the requested variance was justified and he urged the Board to grant it as requested.

RESOLUTION

In Application No. V-81-D-143 by PROVIDENCE SAVINGS & LOAN ASSOCIATION under Section 18-401 of the Zoning Ordinance to allow resubdivision of five (5) lots and part of road r.o.w. into six (6) lots and part of road r.o.w. with proposed lot 4-A having width of 37 ft. (150 ft. minimum lot width required by Sect. 3-106) on property located at 2900, 2901, 2903, 2904 & 2905 Taj Drive, tax map reference 36-1((19))2, 3, 4, 5 & 6, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

094

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 6.11 acres.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems and has an unusual condition in the location of the existing property on the subject property.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 5 to 0.

Page 94, August 4, 1981, Scheduled case of

2:00 P.M. MR. & MRS. B. N. SHAVER, appl. under Sect. 18-401 of the Ord. to allow construction of screened porch addition to 17 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 4200 Dehaven Dr., Brookfield Subd., 44-2((3))194, Springfield Dist., R-3(C), 9,081 sq. ft., V-81-S-144.

Mr. B. N. Shaver of 4200 Dehaven Drive in Chantilly informed the Board that his property was irregularly shaped and the house was situated oddly on the lot. He stated that any place he tried to construct a porch on his property, he would have to apply for a variance. Mr. Shaver stated that his property had converging lot lines. Directly behind his property was a community swimming pool with a 8 ft. buffer zone of cedar trees and shrubbery and a 7 ft. plank board fence. Mr. Shaver stated that the construction of a screened porch would not impact the neighborhood.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 94, August 4, 1981 Board of Zoning Appeals
MR. & MRS. B. N. SHAVER

RESOLUTION

In Application No. V-81-S-144 by MR. & MRS. B. N. SHAVER under Section 18-401 of the Zoning Ordinance to allow construction of screened porch addition to 17 ft. from rear lot line (25 ft. minimum rear yard required by Sect. 3-307) on property located at 4200 Dehaven Dr., tax map reference 44-2((3))194, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

095

RESOLUTION

1. That the owner of the property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 9,081 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including shallow and has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thrity (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 95, August 4, 1981, Scheduled case of

2:15 P.M. DAVID C. ROWE, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing two car carport into a two car garage 8.1 ft. from side lot line such that total side yards would be 17.7 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 5506 Andrews Chapel Ct., Middleridge Subd., 77-1((6))330, Annandale Dist., R-3(C), 12,364 sq. ft., V-81-A-119. (Deferred from July 30, 1981 for decision).

Chairman Smith called for the position of the Board on the David C. Rowe application.

Page 95, August 4, 1981 Board of Zoning Appeals
DAVID C. ROWE

RESOLUTION

In Application No. V-81-A-119 by DAVID C. ROWE under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing two car carport into a two car garage 8.1 ft. from the side lot line such that total side yards would be 17.7 ft. (8 ft. minimum but 20 ft. total minimum side yard req. by Sect. 3-307) on property located at 5506 Andrews Chapel Court, tax map reference 77-1((6))330, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 12,364 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing structure which prevents the applicant from enclosing the carport without requesting a variance.

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

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

RESOLUTION

096

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 96, August 4, 1981, Scheduled case of

2:30 P.M. HERBERT L. GOODWIN, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's determination that three (3) trailers on appellant's property are not accessory uses as defined by the Ord. and are therefore not permitted in this R-1 District, located 3832 Barney Road, Fairwood Estates Subd., 33-2((2))19, Centreville Dist., R-1, 23.2 ac., A-81-C-008. (Deferred from July 28, 1981 for viewing of site and decision).

Mrs. Day stated that she had joined the other Board members and went to the subject property for the purpose of viewing the property. She stated that she could not see that the trailers were accessory uses and agreed with the Zoning Administrator's decision. Accordingly, Mrs. Day moved that the BZA uphold the decision of the Zoning Administrator in the appeal of Herbert L. Goodwin. Mr. Hyland seconded the motion and it passed by a vote of 5 to 0.

//

Page 96, August 4, 1981, After Agenda Items

George Komar: The Board was in receipt of a request from Mr. George Komar to convert his garage into an indoor swimming pool. The garage had been subject of a variance and staff was seeking a determination as to whether it could be converted. It was the consensus of the Board that the variance had been granted for a garage to house automobiles. If Mr. Komar wanted to convert the garage, he would have to file a new variance.

//

Page 96, August 4, 1981, After Agenda Items

Virginia 95 Industrial Park: The Board was in receipt of a request from Mr. Michael Giguere of Boothe, Prichard & Dudley seeking an extension of the existing reimbursement agreement dated the 6th day of December 1976 between the Board of Supervisors and Lynch Construction Corporation. The Board was in also in receiptnof a memorandum from Col. William W. Smith, Jr., Assistant Chief, Site Review Branch recommending the BZA to extend the restoration agreement as requested. It was the consensus of the BZA to grant the extension in accordance with Mr. Giguere's letter as concurred in by Col. William W. Smith, Jr.

//

Page 96, August 4, 1981, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for December 11, 1979 and December 18, 1979. Mr. Hyland moved that the Minutes be approved. Mr. Yaremchuk seconded the motion and it passed by a vote of 5 to 0.

//

Page 96, August 4, 1981, After Agenda Items

Mildred W. Frazer: The Board was in receipt of a request from Ms. Mildred W. Frazer seeking an out-of-turn hearng on a special permit application for 3100 Prosperity Avenue. She requested to be heard at the Board's first meeting in September after their August recess. It was the consensus of the Board to deny the request as they directed the Clerk that no additional applications be scheduled for its first meeting after their recess. Accordingly, Ms. Frazer's application was scheduled in turn for September 29, 1981 at 8:30 P.M.

//

Page 97, August 4, 1981, After Agenda Items

097

The Board was apprised of an incident involving two off-duty police officers serving as security officers at the Woodley Recreation Club in which they had advised the members of the club of a possible violation of the County Zoning Ordinance with respect to the club's after-hours activities. The club contacted the County and were advised of the County's and the BZA's policies regarding the after hours parties. Because of the dedication of the two officers, the BZA requested the Clerk to send a commendation for Corporal Craig and Officer Beach of the Mason Substation to their Chief of Police, Carroll D. Buracker to be placed in their personnel records.

// There being no further business, the Board adjourned at 4:30 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Approved: April 26, 1983
Date

Submitted to the BZA on April 19, 1983

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, September 15, 1981. The Following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland and Ann Day. (Mr. John DiGiulian was absent).

The Chairman called the meeting to order at 10:20 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. RUSSELL S. BIEBER, appl. under Sect. 18-401 of the Ord. to allow construction of carport addition to dwelling to 4 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-412), located 7008 Capitol View Dr., Broyhill Langley Estates Subd., 21-4((13))140, Dranesville Dist., R-3, 14,110 sq. ft., V-81-D-145.

As the required notices were not in order, the Board deferred the variance until November 3, 1981 at 10:00 A.M.

//

Page 98, September 15, 1981, Scheduled case of

10:20 A.M. KARL & LORRAINE BERGSTRESSER, appl. under Sect. 18-401 of the Ord. to allow construction of an attached garage to 17.7 ft. from the side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2847 Hill Rd., Oakcrest Subd., 47-2((3))502, Centreville Dist., R-1, 26,487 sq. ft., V-81-D-148.

Mrs. Lorraine Bergstresser of 2847 Hill Road in Vienna requested that the BZA allow a change in the application. She stated that originally they had planned to build a garage in front of an existing one car garage. Ms. Bergstresser stated that there was structural damage to the one car garage due to excessive pressure on the roof which was assumed to have been caused by the snow of 1978. Chairman Smith inquired if Ms. Bergstresser was requesting a reduction in the variance but was informed that Ms. Bergstresser was requesting permission for the structure they were planning to build to extend backward. She stated that it would not be extended in width. It would still be 17.7 ft. from the side lot line. In addition, she indicated that it would not only be a garage, but it would be extended 16 ft. back. Chairman Smith stated that the request would require a readvertising because of the change in location and size of the structure. Mr. Covington stated that the advertising did not indicate the depth of the structure but Chairman Smith stated that it would have to be readvertised because of the change in the structure as it increased the variance. Ms. Hicks stated that if the applicant had come in previously with a different plat, a substitution of plats would have been allowed. Chairman Smith stated that he felt it was irregular and indicated that it was up to the Board to decide whether to accept substitute plats at this late date. Chairman Smith stated that the structure was going from 20 ft. to 35 ft. and he felt it should be readvertised. Mr. Covington stated that he would have agreed with the Chairman if the dimensions had been given in the advertising but he felt the substitution was allowable since the advertisement did not indicate any dimensions.

Mr. Hyland stated that the Chairman had a good point in that it was the amount of the increase that had to be considered. He stated that he questioned the matter of notices as being fair notice. Ms. Bergstresser stated that the property owner to the left was aware of her plans and he had no objection. Chairman Smith inquired as to what had been contained in the applicant's letter to the contiguous property owners and whether it contained the intent of what Ms. Bergstresser was now requesting. Ms. Bergstresser stated that she wanted to convert her garage into a work room. The original structure was not sound and they wanted to tear it down. It would be rebuilt as part of the new structure and would be used for a laundry room and work room. Ms. Bergstresser asked the Board to allow her to substitute the plats.

Chairman Smith stated that he would abide by whatever the Board wanted to do in the situation. He stated that if some neighbor had come in to look at the variance application prior to the hearing, he would not have known of the request for the larger structure. Chairman Smith stated that he had a problem as to whether the BZA could grant the additional variance for the additional room. Mr. Covington stated that the use was not normally associated with the advertising. Ms. Bergstresser stated that she had called the Board's office and had been advised that the substitution of plats would be allowed at the public hearing. Mr. Hyland stated that he Had a problem with the notice and advertising. He indicated that he was not normally super technical but he was concerned about this application.

It was the consensus of the Board to defer the matter until October 6, 1981 at 1:30 P.M. to allow for additional advertising.

//

Page 99, September 15, 1983, Scheduled case of

10:30 A.M. BERT G. & DEBBIE D. PIGGE, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's revocation of temporary Special Permit (TSP-092-80) for Contractor's Office, located 3132 Annandale Rd., Bernard Lieb Subd., 50-4((1))3A, Mason Dist., R-4, 0.393 ac., A-81-M-007. (Hearing was held on July 14, 1981 and decision was deferred for period of 60 days).

099

Mr. Yaremchuk stated that there was an absent Board member and he indicated that the BZA did not make decisions without a full Board. Mr. Hyland stated that there was not any reason to make a decision as the problem had been removed. Mr. Hyland stated that he felt it would be appropriate to have the application withdrawn. Chairman Smith stated that he did not have any problem with a deferral.

Mr. Yaremchuk moved that the Board of Zoning Appeals uphold the decision of the Zoning Administrator in the appeal application. Ms. Day seconded the motion and it passed by a vote of 3 to 1 (Mr. Hyland)(Mr. DiGiulian being absent).

//

Page 99, September 14, 1983, Scheduled case of

10:40 A.M. GEZA CSERI, appl. under Sect. 18-401 of the Ord. to allow subd. into two (2) lots with proposed lot 2 having width of 12 ft. (200 ft. min. lot width req. by Sect. 3-E06), located 839 Towlston Rd., 20-1((1))48A, Dranesville Dist., R-E, 5.652 ac., V-81-D-101. (Deferred from July 28, 1981 at request of applicant and for notices).

The Board was in receipt of a letter from the applicant requesting withdrawal of the application. Mr. Yaremchuk moved that the Board allow the withdrawal without prejudice. Mr. Hyland seconded the motion. The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

//

Page 99, September 14, 1983, Scheduled case of

10:50 A.M. DARRYL T. DU BOSE, appl. under Sect. 18-406 of the Ord. to allow deck to remain 15.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 3299 Tilton Valley Dr., Hickory Hills Subd., 46-1((17))53, Centreville Dist., R-1, 20,515 sq. ft., V-81-C-149.

Mr. Du Bose of 3299 Tilton Valley Drive informed the BZA that a deck had been constructed on the rear of his home by the builder. He stated that he had purchased the home one year after it was built from the original owner. When the survey was filed with the County, it was discovered that there was a discrepancy regarding the deck and he was required to file for a variance.

Chairman Smith inquired if Mr. Du Bose had purchased the home from the builder but was informed that he had purchased it from the first owner. Chairman Smith stated that it was a wonder that the deck slid by the first title check. Chairman Smith inquired if the deck was on record with the final plat. Mr. Hyland inquired as to when Mr. Du Bose was informed of the violation and whether it was before closing or after closing on the property. Mr. Du Bose responded that he was notified by the County that the deck was in violation. It had been after the final residential use permit was done. Mr. Covington informed the Board that the actual house surveys were slow in coming in to the County. Mr. Hyland inquired as to whom had performed the survey and was informed it was Mr. Miller. Chairman Smith inquired if Mr. Du Bose had assumed the original loan on the house. Mr. Du Bose stated that he had assumed the loan and the previous owners had left plats for him. They did not show the deck. Mr. Hyland inquired if the final plats showed the deck and Mr. Du Bose stated that it did. Chairman Smith inquired if the original owner had constructed the deck. He was informed by Mr. Du Bose that the deck was an option by the builder. Chairman Smith inquired if Mr. Du Bose had constructed the deck in error and was informed he had not. Mrs. Day inquired as to what located at the rear of the property and was informed there were woods. Mrs. Day asked if there way any structure behind the property that would view the deck and was informed there was not.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 99, September 15, 1983 Board of Zoning Appeals
DARRYL T. DU BOSE

R E S O L U T I O N

In Application No. V-81-C-149 by DARRYL T. DU BOSE under Section 18-406 of the Zoning Ordinance to allow deck to remain 15.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412) on property located at 3299 Tilton Valley Drive, tax map reference 46-1((17))53, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

RESOLUTION

100

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 20,515 sq. ft.
4. That the applicant's property has exceptional topographic problems.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 100, September 15, 1981, Scheduled case of

11:00 A.M. RICHARD D. CROSBY, appl. under Sect. 18-401 of the Ord. to allow construction of an addition to existing attached garage to 4 ft. from side lot line such that total side yards would be 17 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 4719 Carterwood Dr., Briarwood Subd., 69-3((8))120A, Annandale Dist., R-3(C), 9,321 sq. ft., V-81-A-150.

Mr. Richard D. Crosy of 4719 Carterwood Drive in Fairfax informed the Board that he owned three cars and only had a one car garage. He stated that he had moved to this home from Florida and had inadequate storage for his property and his vehicles. He stated that when he had purchased the home, he had talked to the builder about a two car garage and was informed there were none available. Mr. Crosby informed the Board that he proposed to extend the roofline on the garage structure to form a two car garage. According to Mr. Crosby, there was one other home on his cul-de-sac that had a two car garage similar to the one he was proposing.

In response to questions from the Board, Mr. Crosby stated that he had purchased the home on the 4th of July on his wedding anniversary. It was a new home and Mr. Crosby was the first owner. Mr. Crosby stated that he had been transferred to this area from Florida. He stated that one of the three cars belonged to his son who attends George Mason. Mr. Crosby stated that his son would not be living at home forever. Mrs. Day inquired as to the reactions from the neighbors with respect to the variance. Mr. Crosby stated that he was the last house on his side of the street in the subdivision that was constructed and occupied. He stated that there were several houses under construction and not occupied and two of them had two car garages. Mr. Crosby stated that the house to his right was owned by a man who certified letter was returned unclaimed. Mr. Crosby informed the Board that it was his understanding that the house was up for sale and that a lady was present who represented that household. Mr. Crosby stated that it was his feeling that the two car garage would not infringe on the beauty of the area. He stated that the house to his right was not occupied.

Mr. Hyland inquired as to the distance between the proposed garage and the closest structure Mr. Crosby stated that at the present time, it was approximately 20 to 30 ft. After the garage was constructed, it would drop to about 9 ft. Mr. Hyland inquired if there was any screening between the structures and was informed there was not any. Mr. Crosby stated that he had put some plantings in his area. He informed the Board that he was prepared to go ahead with the construction. Mr. Crosby stated that he had just moved in and was not unpacked yet. Mr. Crosby stated that his garage would be constructed by the same builder as Swanson Homes. Mr. Hyland inquired about the plantings Mr. Crosby had put in and was informed there were not any on the side of the proposed garage. Mr. Crosby stated that he had planted approximately 30 azalaes at the rear of his home, 2 trees in the front consisting of a Crabapple Tree and a Colorado Blue Spruce. Mr. Crosby stated that he would like to have

101

a hedge on the property line as it would enhance the property. Mr. Crosby informed the Board that he had not received any opposition from anyone with regard to his request. Mrs. Day inquired about a utility line in the front of the structure and asked on whose property it was located. Mr. Crosby responded that the utility line was to the left of the property line by about 4 or 5 ft. He stated that his lot was trapezoid being wider at the front than at the back. Mr. Crosby informed the Board that only part of the structure needed a variance. In response to further questions from the Board, Mr. Crosby stated that he intended to plant a hedge on the property line for privacy. He stated that it would be 6 ft. high at most and would be of some material that he could manage. Mr. Crosby stated that he did not plan to use boxwood as it grew too slowly.

There was no one else to speak in support of the application. Mrs. Elizabeth Abood of 3313 Dauphene Drive in Falls Church informed the Board that she had the house next door to Mr. Crosby up for sale. She stated that several of the buyers had expressed concern about the variance that he was proposing. According to Mrs. Abood, many of the neighbors opposed the addition as they feared it would establish a precedent. Mrs. Abood informed the Board that both she and her husband felt that the application should be deferred until a potential buyer moved in next door as the buyer might object to the variance. Mrs. Day inquired if there would be room on the lot next door for a two car garage. Mrs. Abood stated that she did not know whether a two car garage could be constructed as she did not know the dimensions. Mr. Hyland inquired if anyone lived in the house next door. Mrs. Abood stated that the home had been purchased for her son who was unable to live there and it was presently up for sale. Mrs. Abood requested the BZA to defer the variance until after someone moved into the house. Mr. Hyland inquired as to the length of time the home had been up for sale and was informed it had been on the market for one month. Mrs. Abood stated that she had not been informed of the variance and did not know what was going on. Mr. Hyland stated that the Real Estate Tax Records still showed the builder as the owner of the property. Mr. Hyland questioned Mrs. Abood's testimony regarding the neighbors opposition. Mrs. Day questioned where the Aboods lived. Mrs. Abood informed the Board that her husband stayed at the property from 1:30 P.M. until 7:00 P.M. since the property was up for sale. It was during those hours that the neighbors had expressed concern about the variance. Mrs. Abood informed the Board that she and her husband resided in Falls Church.

Chairman Smith stated that this was a new subdivision and that Mr. Crosby's house took up all of the space. He stated that Mr. Crosby should not have been mislead into thinking that he could get relief through a variance. Mrs. Day inquired of Mrs. Abood as to how many cars her son had and was informed he had a truck. There was no one else to speak in opposition.

During rebuttal, Mr. Crosby stated that he was a resident owner and intended to live in the house. He stated that his goal was to make the home as liveable for his intents as possible. The house on the side of him was up for sale and no one lived there. He stated that he did not know the neighbors. Mr. Crosby stated that many of his neighbors had been to his home and no one had objected. Mr. Crosby stated that he was not requesting a toolshed. The proposed garage would have the same roofline extension as the house across the street from him. He indicated that it would enhance the area and should not keep Mrs. Abood from selling her property. Mr. Crosby stated that the Aboods had purchased the house as a business investment. Mr. Crosby stated that there was no secret about his construction and no one had made any inquiries to him. Mr. Yaremchuk informed Mr. Crosby that it was not a business investment when the Aboods had purchased the property for their son. Mr. Crosby withdrew his statement. Mr. Crosby stated that the neighbors he had talked to had remarked favorably about his proposed garage. Mrs. Day commented that Mr. Abood was at his property every day from 1:30 to 7:00 and could have asked Mr. Crosby about the construction. Mr. Crosby stated that the sign was on his property informing anyone of the variance. Mr. Yaremchuk stated that he did not believe Mrs. Abood really objected to the variance and could not see how it would keep her from selling her house. However, he indicated that everyone was entitled to their opinion.

Page 101, September 15, 1981 Board of Zoning Appeals
RICHARD D. CROSBY

R E S O L U T I O N

In Application No. V-81-A-150 by RICHARD D. CROSBY under Section 18-401 of the Zoning Ordinance to allow construction of an addition to existing attached garage to 4 ft. from side lot line such that total side yards would be 17 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), on property located at 4719 Carterwood Drive, tax map reference 69-3 ((8))120A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

RESOLUTION

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 9,321 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and this is the only place on which to add onto the garage.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 102, September 15, 1981, Scheduled case of

11:10 A.M. ALICE R. THOMPSON, appl. under Sect. 18-401 of the Ord. to allow construction of storage shed 4 ft. from side lot line such that total side yards would be 19.7 ft. (8 ft. min. but 24 ft. total min. side yard req. by Sect. 3-207), located 7710 Falstaff Rd., McLean Hamlet Subd., 29-2((5))56, Dranesville Dist., R-2(C), 17,287 sq. ft., V-81-D-153.

Ms. Alice R. Thompson of 7710 Falstaff Road in McLean informed the Board that her yard contained a large number of trees and a very tall maple tree. She stated that she wanted to preserve the large maple tree but also wanted a tool shed. If she complied with the setback requirements, she would have to remove one tree and several others might die. Ms. Thompson stated that she had found an area that was ideal but it was only 4 ft. from the property line. It would not require the removal of any trees. Ms. Thompson stated that there was Wild Holly and a Cherry Tree that would screen the shed from the rear neighbor. She stated that the neighbor used that area for storage of firewood. Ms. Thompson stated that she had planted a Japanese Holley Hedge and would plant more screening. She informed the Board that she was observing the rear setback.

In response to questions from the Board, Ms. Thompson stated that the neighbor to the rear who shared a small portion of her lot line had not done anything to his yard. There were no plantings, evergreens or azalaes. The other property was occupied by tenants. It was owned by Shannon and Luchs. Ms. Thompson stated that she had not met any of the other neighbors. Ms. Thompson stated that she had favorable letters from some of her neighbors. She stated that she had owned the property since December 1974. Chairman Smith inquired as to why Ms. Thompson did not locate the shed up to the rear of the house where there were not any trees to worry about. Ms. Thompson stated that the trees came out 25 ft. from the rear property line. Chairman Smith stated that there was considerable space for the shed. Ms. Thompson stated that the shed would be an eyesore if it were located in the open area. She indicated that the shed would be on footers and would match the existing dwelling. It would be less than 12½ ft. high and would have 8 ft. sides.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-D-153 by ALICE R. THOMPSON under Section 18-401 of the Zoning Ordinance to allow construction of storage shed 4 ft. from side lot line such that total side yards would be 19.7 ft. (8 ft. min. but 24 ft. total min. side yard req. by Sect. 3-207) on property located at 7710 Falstaff Road, tax map reference 29-2((5))56, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

103

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 17,287 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings and the number of large trees on the subject property and the proposed location of the shed seems to be the most reasonable placement without having to remove the large trees. In addition, there was no opposition to the requested variance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 103, September 15, 1981, Scheduled case of

11:20 A.M. J. RONALD MAZURIK, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling 5 ft. longer than that authorized by V-81-A-094, to 6.4 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 8250 Toll House Rd., Chapel Square Subd., 70-2((7))25, Annandale Dist., R-3, 12,325 sq. ft., V-81-A-156.

Mr. J. Ronald Mazurik of 8250 Tollhouse Road in Annandale informed the Board that the property on which his house was constructed was irregularly shaped. It was very narrow which necessitated the request for the variance which was granted by the BZA in July. However when the contractor came to build the garage addition, it was determined that Mr. Mazurik had not provided room for walking around the vehicles. Mr. Mazurik stated that he had approval from his neighbors and complete agreement from all ten notified by certified mail. In response to questions from the Board, Mr. Mazurik stated that the house was not under construction as it had been built in October of 1978. The requested variance was for a garage. Mr. Mazurik informed the Board that he had one vehicle which he used and one that was stored in Pennsylvania as it was very valuable.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-A-156 by J. Ronald Mazurik under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling 5 ft. longer than that authorized by V-81-A-094, to 6.4 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 8250 Toll House Road, tax map reference 70-2((7))25, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

RESOLUTION

104

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 12,325 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in the location of the existing buildings on the subject property and the additional request for 5.6 ft. is to allow the applicant to walk around the vehicles parked in the garage.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 104, September 15, 1981, Scheduled case of

11:30 A.M. RONALD A. & JACQUELYN L. ZEITZ, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling 12.4 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207), located 8017 Agin Ct., McLean Hamlet Subd., 29-2((3))331, Dranesville Dist., R-2, 15,083 sq. ft., V-81-D-157.

Mr. Ronald Zeitz of 8017 Agin Court in McLean informed the BZA that his house was a four bedroom Colonial. The kitchen was only 10'x11' and there was no eat-in space provided. Mr. Zeitz stated that he had three children and the family ate in the dining room. He stated that he wanted to construct a kitchen that would serve the use of the house. In response to questions from the Board, Mr. Zeitz stated that he had owned the property since July of 1979.

There was no one else to speak in support and no one to speak in opposition.

Page 104, September 15, 1981 Board of Zoning Appeals
RONALD A. & JACQUELYN L. ZEITZ

RESOLUTION

In Application No. V-81-D-157 by RONALD A. & JACQUELYN L. ZEITZ under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 12.4 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207), on property located at 8017 Agin Court, tax map reference 29-1((3))331, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 15,083 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in the location of the existing buildings on the subject property.

R E S O L U T I O N

105

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thrity (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 105, September 15, 1981, Scheduled case of

11:40 A.M. LAWRENCE A. & DORIS V. BLAKE, appl. under Sect. 18-401 of the Ord. to allow construction of a 16 ft. high detached garage 3.0 ft. from a side lot line, 3.0 ft. from the rear lot line and 17.77 ft. from a street line on a corner lot (10 ft. min. side yard, 16 ft. min. rear yard and 30 ft. min. front yard req. by Sects. 3-407 & 10-105), located 2844 Meadow La., Hillwood Subd., 50-4((8))28, Providence Dist., R-4, 5,700 sq. ft., V-81-P-133. (DEFERRED FROM AUGUST 4, 1981 TO ALLOW ADVERTISING OF THIRD VARIANCE.)

Mr. Lawrence Blake of 2844 Meadow Lane in Falls Church informed the Board that he had been before them on August 4th. Since that time, he had revised the site plan to indicate the amounts of the requested variance, specifically to the front lot line. Mr. Blake stated that his reason for constructing the garage 3 ft. from the side and rear lot line was because of a big tree that he did not want to remove. The tree would be located between the dwelling and the proposed garage. Mr. Blake stated that the site plan did not give justice to the location of the garage. He informed the Board that this was an excellent location for his garage. Chairman Smith inquired as to why the garage was proposed to be 30 ft. Mr. Blake responded that he had three vehicles and parking on the street in his area was impossible. He stated that he needed a place to get two of the vehicles off of the street. Mr. Blake stated that the tool shed on his property would be removed and the 30 ft. garage would allow him room for garden equipment and tools that he used in the care of his property. Mrs. Day noted that the lot was very shallow as the length of the lot was on the street. Mr. Yaremchuk stated that the property was substandard as it was only 50 ft. wide. Mr. Blake informed the Board that his garage would be back along Westover Street. Mrs. Day inquired as to what was located to the property of the right of the proposed garage. Mr. Blake stated that it was all back yards and his neighbors did not object.

There was no one else to speak in support and no one to speak in opposition.

Page 105, September 15, 1981 Board of Zoning Appeals
LAWRENCE A. & DORIS V. BLAKE

R E S O L U T I O N

In Application No. V-81-P-133 by LAWRENCE A. & DORIS V. BLAKE under Section 18-401 of the Zoning Ordinance to allow construction of a 16 ft. high detached garage 3.0 ft. from a side lot line, 3.0 ft. from the rear lot line and 17.77 ft. from a street line on a corner lot (10 ft. min. side yard, 16 ft. min. rear yard and 30 ft. min. front yard req. by Sects. 3-407 & 10-105), on property located at 2844 Meadow Lane, tax map reference 50-4((8))28, County of Fairfax, Virginia, mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1981; and

RESOLUTION

106

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 5,700 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 106, September 15, 1981, Scheduled case of

12:00 NOON — PAUL J. & TERESA M. KLAASSEN T/A SUNRISE TERRACE, INC., appl. under Sect. 3-203 of the Ord. to amend Special Permit granted June 11, 1957 and amended May 17, 1960 for nursing facilities for a maximum of 27 patients, to permit change of permittee, located 10322 Blake Lane, 47-2((1))70, Providence Dist., R-2, 1.7465 ac., S-81-P-051.

Mr. Paul Klaassen of 3361 Artery Court in Falls Church informed the Board that he was the contract purchaser of the property located at 10322 Blake Lane. Northern Virginia Bank was the Trustee for the property owner, Mrs. Fowler. Mr. Klaassen informed the BZA that Mr. Fowler had passed away in 1978. Chairman Smith stated that there was a long list of corrections to be made to the property and inquired if Mr. Klaassen was aware of them. Mr. Klaassen responded that he had taken steps to have an estimate performed and work would soon begin on the repairs. Chairman Smith stated that this was an old nursing home granted back in 1957. He inquired if Mr. Klaassen was going to operate the facility himself. Mr. Klaassen stated that he and his wife would operate the retirement home. Chairman Smith inquired if the nursing facility was being operated at the present time. He was informed that it had closed up last January. Chairman Smith stated that this had been an old facility operated by Mr. and Mrs. Fowler. Mr. Klaassen stated that this application was to allow a change of ownership only. Chairman Smith stated that the site plan came into it. He indicated that the applicant could request a waiver of the site plan but the BZA was not the proper body to discuss a waiver. Mr. Yaremchuk stated that he did not believe that the County could legally require the applicant to dedicate property under the site plan process. Chairman Smith stated that there was a proposed 60 ft. right-of-way and dedication of 45 ft. would be required according to comments of the Design Review Branch. Mr. Klaassen stated that the use came into being prior to the requirements for site plan. He did not believe that a change of ownership would make the site plan requirements come into play.

Mr. Covington informed the Board that a change of use would require a site plan but not a change of ownership. Mr. Klaassen stated that this particular portion of Blake Lane was off of the real Blake Lane. Chairman Smith stated that the dedication was for the future road widening. Mr. Yaremchuk stated that he did not personally feel that this application came under site plan since it was for a change of ownership. He did not feel that the County could require dedication unless there was problem with drainage. However, he stated that they could make him put in sidewalks. Chairman Smith stated that the request for dedication of 30 ft. from the centerline of the road under this special permit was a reasonable request. Ms. Karen Harwood, Assistant County Attorney, informed the Board that if the BZA deemed the dedication to be a reasonable request, it could require it as a condition on the special permit. Mr. Yaremchuk stated that all the applicant was doing was changing the name. He inquired of the applicant as to what would be done with the property. Mr. Klaassen responded that his facility would have less than thirty people. Chairman Smith stated that the applicant may only be amending the original resolution, but the BZA should consider it as a new application with a new permittee and bring the facility up to date

107

with parking requirements and any other changes that should take place after 25 years of operation. Chairman Smith indicated that the Board should address the permit on a present day basis.

Mr. Klaassen informed the Board that he was concerned about what they were doing with his application. Chairman Smith stated that the Board needed to update the parking requirements and have the facility meet the present Ordinance requirements. He stated that it was not 1957 any longer. Mr. Hyland inquired if the BZA had any instance of non-compliance with the facility with regard to the requirements. He inquired about the parking situation. Mr. Klaassen stated that the plat indicated that the parking was asphalt and there were 20 spaces. Mr. Hyland inquired as to the number of parking spaces that would be required. Chairman Smith responded that a change in the parking lot area would have to be made to accommodate the yard area and to meet other requirements to the satisfication of the Director of Environmental Management. He stated that the parking lot needed to be laid out and designated with the parking spaces. He stated that this application was a change of ownership and a change of permittee and had to be governed by the existing Ordinance.

Mr. Klaassen informed the BZA that he intended to line the parking lot with designated spaces. Chairman Smith stated that it needed to be shown on the plat. Mr. Klaassen informed the BZA that he had a contract for the property to the north. Chairman Smith inquired of Mr. Covington as to the required setback from residential property and was informed it was 100 ft. Mr. Covington informed the BZA that the applicant had wanted to apply for a variance from the 100 ft. setback but he had advised him that it was not necessary.

Mr. Yaremchuk stated that he had a problem with making the applicant conform to the present Ordinance. He stated that this was a non-conforming business and the applicant was only requesting a name change. The use was not changing. Therefore, Mr. Yaremchuk could not understand the rationale for making the applicant conform to the present Ordinance. He argued that nothing had changed except that the applicant was requesting a change of name. He inquired as to how the BZA could make him comply with the Ordinance. Mr. Hyland stated that the former permittee came under the old Ordinance and now a person was coming in 20 years later. He asked if the new applicant was allowed to piggyback. Mrs. Day stated that the applicant should dedicate the frontage as it would not hurt him to provide the 20 ft. for when the time required it. Mr. Yaremchuk stated that he did not believe the County could take the land. Chairman Smith stated that the BZA could require it as part of the special permit conditions.

Chairman Smith stated that the previous special permit was issued to Mr. Fowler and his wife to operate a nursing home. They ceased operation of the use in January of 1981. It was not operated as a nursing home any longer. Chairman Smith stated that apparently there was some change as the new applicant was requesting a convalescent home for adults. Mr. Yaremchuk stated that the plat had not changed from the time of the original special permit. Chairman Smith stated that the Ordinance had changed and the new applicant had to be considered under the existing Ordinance rather than the one in effect in 1957. Mr. Yaremchuk stated that it dealt with land use and was to control whatever was on the property when the use changed. Chairman Smith stated that it was not a continuing use. He stated that the use was no longer there and the special permit was no longer there. Now Mr. Klaassen was requesting the Board to grant a special permit to operate a facility at the location.

Mr. Klaassen agreed with Chairman Smith. He informed the Board that he had been told by a number of people on the staff that all he would need was a change of permittee. Chairman Smith stated that the special permit was going from an individual corporation to a corporation. Mr. Klaassen inquired as to what would be required of him. Chairman Smith stated that he would be required to show the parking spaces and to meet all of the suggestions of Design Review with regard to the transitional screening requirements.

Mr. Hyland stated that the Board was back full circle as to whether the application was under site plan control. Mr. Hyland stated that he did not know whether this application was a permit being amended or a new permit because of the new owner. Chairman Smith stated that it was not an amendment. He suggested that the BZA take the matter under advisement and attempt to get an answer in a couple of weeks. Chairman Smith stated that this was a new applicant. Mr. Yaremchuk agreed that the matter needed to be resolved and he suggested that the application be deferred for one week. Mr. Hyland inquired if the BZA could obtain the answer today but was informed by Chairman Smith that Mr. Yates needed to be involved in the discussion. He also stated that the BZA should include Mr. Hendrickson in the discussion.

Mr. Peter Klaassen spoke in support of the special permit application. He informed the Board that he was a County employee and knew some of the staff people who had written the staff report. Art Rose was the supervisor of the author of the Design Review comments. Mr. Klaassen stated that he had brought up the very same question as Mr. Yaremchuk as to whether this was under site plan control. Mr. Klaassen stated that it was his contention that it could be brought under site plan control. Mr. Rose was also of the opinion that it the application was only for a change in ownership then the dedication of the road improvements would not be necessary.

108

Chairman Smith stated that the BZA needed to set certain conditions on the use involved in the application. He indicated that one week was not a long time to delay the application. Chairman Smith stated that he wanted to talk to the County Attorney's Office as he felt that the parking and screening needed to be shown on the plat. In addition, he indicated that the BZA needed to discuss the matter with Mr. Yates because of the enforcement issue. Chairman Smith indicated that one week would be satisfactory. Mr. Yaremchuk agreed that the BZA needed to discuss the matter with Mr. Yates. He stated that if the application did come under site plan, he wanted to know why. If it was a new permit, then the Board needed to be clear on it as there might be problems in the future.

Chairman Smith stated that this was a new use permit and a new application as it was previously granted to Mr. Fowler. The property was in the hands of a Trustee. Mr. Yaremchuk moved that the Board defer the application for a period of one week. Mr. Hyland seconded the motion. Mr. Paul Klaassen informed the Board that he made the application in July and had a contigency on the contract. He stated that he was running up against a deadline. Mr. Hyland inquired as to what could not be accomplished in the interim or what the problems would be with regard to the one week deferral. Mr. Klaassen stated that he could proceed with the repairs of the major areas. Mr. Hyland stated that whatever the BZA did needed to be done right. That was the reason for the question being raised about site plan control. Mr. Hyland stated that he was going to vote for the special permit but wanted it done right. Chairman Smith stated that he would support the application if the suggestions of Design Review were followed.

Chairman Smith stated that the present application was a reduction in land area from the 1960 land reduction. The house that the Klaassens were planning to live in had been deleted from the application. Chairman Smith stated that he remembered the old house on the property as he had been on the Board.

The vote on the motion to defer for a one week period passed by a vote of 4 to 0 (Mr. DiGiulian being absent). The matter was deferred until September 22, 1981 at 1:00 P.M.

//

Page 108, September 15, 1981, Recess

At 1:05 P.M., the Board of Zoning Appeals convened for lunch and did not return until 2:20 P.M. to continue with the after agenda items.

//

Page 108, September 15, 1981, After Agenda Items

Church of Jesus Christ of the Latter Day Saints, S-80-V-003: The Board was in receipt of a letter from Kenneth J. Kopocis from Rees, Broome & Diaz, P.C. for an out-of-turn hearing or a special hearing regarding the location of a construction entrance through the 25 ft. buffer strip provided for in S-80-V-003. The Board was also in receipt of a memorandum from Phil Yates to Oscar Hendrickson regarding the site plan and a letter from Joseph A. Bacci addressed to J. Lambert, County Executive, with regard to the mormon church.

After review of the matter, it was the consensus of the Board to schedule the hearing for Tuesday Night, October 27, 1981 at 8:30 P.M.

//

Page 108, September 15, 1981, After Agenda Items

Charter School: The Board was in receipt of a document signed by J. Hamilton Lambert, County Executive, and David M. Rivers, Headmaster of the Charter School. Chairman Smith stated that it was a four page agreement that was suggested by Mr. Rivers of the Charter School and agreed to by Mr. Lambert in order to facilitate the concerns of the citizens in the area. Mr. Hyland stated that it was his understanding that the Board of Supervisors had taken a vote to appeal the decision of the BZA even before it had acted on the application. Since the BZA had acted on the application, they had appealed the decision. Now, an agreement had been entered into for certain conditions in exchange for the Board of Supervisors not to appeal.

Chairman Smith stated that the BZA was not being asked to approve the document because the parties had not agreed to anything that could not have been done by the BZA. The BZA had set the limit of 660 students in condition no. 4 and transitional screening was covered in condition no. 31. Chairman Smith found the document very interesting. The variance request shall consist of a two shot treatment. Chairman Smith stated that the Board wanted a complete record on this use so that there would not be any questions in the future. Mr. Hyland inquired if the BZA was being asked to amend the special permit to include these new agreed upon conditions. Chairman Smith stated that there was not anything new. It was only minor engineering changes. He suggested that the Board wait on approval of the docu-

109

ment until it received revised plats. Chairman Smith advised the Board that in order to avoid expensive litigation, he had gotten involved to an extent. Chairman Smith informed the Board that he had suggested that Mr. Rivers get with the Board of Supervisors as he felt that the Board was correct in its analysis to grant the special permit.

Chairman Smith stated that the County Executive and the County Attorney had reviewed the special permit and felt the same as the BZA that it had acted in good faith in granting the special permit. Chairman Smith stated that the document was the end result of discussions between Mr. Bradley representing the citizens and a representative from Supervisor Falk's Office. Mr. Covington informed the BZA that he had received a call from Mr. Rivers that the school was going to come back to the Board for a temporary site.

Chairman Smith stated that the agreed suggestions would make the citizens happy and save the taxpayers some money. Mr. Yaremchuk moved that the Board just accept the document for information purposes. Mrs. Day seconded the motion. The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

//

Page 109, September 15, 1981, After Agenda Items

Enterprise Learning Center: The Board was in receipt of a request from Ms. Michele E. Surwit, Director of the Enterprise Learning Center for an out-of-turn hearing for a school located on Chain Bridge Road in McLean. In addition, Mr. Vince Picciano of Fairfax County Juvenile & Domestic Relations Court was endorsing the request for the out-of-turn hearing. Both were seeking to be scheduled on the October 6th agenda. Mr. Yaremchuk informed the Board that Mr. Picciano had contacted him regarding the request. The County wanted the school opened up immediately. It was the consensus of the Board to grant the request and the hearing was scheduled for October 6, 1981 at 1:45 P.M.

//

Page 109, September 15, 1981, After Agenda Items

David G. Skiados: The Board was in receipt of an out-of-turn hearing request from David G. Skiados because of an unusual hardship. The application was filed August 28th and was presently scheduled for October 21st due to the holiday in October. It was the consensus of the Board to leave the application in the normal scheduling pattern and deny the request.

//

Page 109, September 15, 1981, After Agenda Items

Greensboro Associates, V-80-D-039: The Board was in receipt of a request from Jerry K. Emrich of Lawson, Walsh, Colucci & Malinchak regarding a second extension of V-80-D-039 granted to Greensboro Associates on April 8, 1980. Mr. Yaremchuk moved that the Board allow a second six month extension. Mr. Hyland seconded the motion and it passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

//

Page 109, September 15, 1981, After Agenda Items

Grown Books: The Board was in receipt of a request from Vance D. Corbett of Jack Stone Sign INc. requesting an out-of-turn hearing for a variance for a building mounted sign in a shopping center. It was the consensus of the Board to deny the request.

//

Page 109, September 15, 1981, After Agenda Items

DR. Bruce Shauer: The Board was in receipt of a request from Michael Redden regarding an out-of-turn hearing on the application of Dr. Bruce Shauer. It was the consensus of the Board to grant the request and the hearing was scheduled for Tuesday, October 6, 1981 at 2:00 P.M.

//

Page 109, September 15, 1981, After Agenda Items

Road Aggregates: The Board was in receipt of a request from Kenneth White of Alexandria Surveys regarding an extension of the variance granted to Road Aggregates. Mr. Yaremchuk moved that the Board grant the fourth extension for a period of six months. Mr. Hyland seconded the motion and it passed by a vote of 3 to 1 (Chairman Smith)(Mr. DiGiulian being absent).

//

Page 110, September 15, 1981, After Agenda Items

Donald & JoAnn Smith: The Board was in receipt of a revised plat from Donald & JoAnn Smith seeking approval of the relocation of the proposed garage to 12.5 ft. from the side lot line in lieu of the 7.5 ft. granted by the BZA in V-81-P-118. Mr. Yaremchuk moved that the Board approve the relocation as a minor engineering change inasmuch as the applicant was now seeking a lesser variance than had previously been approved. Mr. Hyland seconded the motion and it passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

110

//

Page 110, September 15, 1981, After Agenda Items

Rose Hill Baptist Church: The deferred special permit application of the Rose Hill Baptist Church was again presented to the Board. It was the consensus of the Board to defer the application for a period of 90 days to inquire of the applicant as to what the church's intentions were regarding the special permit.

//

Page 110, September 15, 1981, After Agenda Items

Mr. & Mrs. Les Pomeroy: The Board was in receipt of a memorandum from John F. Herrity, Chairman of the Board of Supervisors regarding the variance application granted by the BZA to Mr. & Mrs. Les Pomeroy on July 28, 1981, case no. V-81-M-105. The memorandum informed the BZA of the Board's discussion of the variance hearing held on July 28, 1981 despite the written requests of two adjoining property owners who were seriously affected by the proposal that the matter be deferred until they could attend the hearing. The property owners were now asking that the BZA grant them an opportunity to be heard and were supported in their request by the Broyhill Crest Citizens Association.

Mr. Hyland stated that there were a number of issues raised in the memorandum which he wished to respond to. First, it seemed clear that at the time the case the was heard, there were two letters in the file which had been submitted by neighbors in opposition and that those letters requested that the hearing be deferred because of the inability to attend the meeting. Mr. Hyland stated that he did not remember either of the two letters being brought to the attention of the BZA even though they were in the file. He stated that he did not recall any discussion that an adjoining property owner had requested a deferral of the hearing or that the decision be held off. Mr. Hyland stated that he was bothered by the fact that if the Board had been aware of that information, it would have done something difference or deferred the hearing.

In view of that fact, he moved that the Board rescind its action taken on the 28th of July for the express purpose of permitting the two property owners to present their views and he further moved that the motion be given to the applicant in order that the applicant has notice of the BZA's action. Mr. Yaremchuk seconded the motion. He stated that he felt the same way as Mr. Hyland that if the BZA had all the information, it would not have acted as it did. He also felt that everyone should be heard and have their day in court. Mrs. Day stated that she had no knowledge of having seen the letters either. Mr. Yaremchuk stated that the Board had a very heavy agenda on July 28th and may have overlooked it. The vote on the motion to rescind the action taken on July 28th passed by 3 to 0 with 1 abstention (Chairman Smith)(Mr. DiGiulian being absent).

It was the consensus of the Board to reschedule the hearing for Wednesday, October 21, 1981 at 10:00 A.M.

// There being no further business, the Board adjourned at 3:10 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith
Daniel Smith, Chairman

Submitted to the BZA on May 10, 1983

Approved: May 17, 1983
Date

111

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, September 22, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:30 A.M. and Mrs. Day led the meeting in prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. RAOUL W. & PHYLLIS W. LOPEZ, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of existing carport to 4.5 ft. from side lot line such that total side yard would be 16.7 ft. (8 ft. min. but total of 20 ft. min. side yard req. by Sect. 3-307), located 9519 Vandola Ct., Bent Tree Subd., 78-3((5))231, Springfield Dist., R-3(C), 8,490 sq. ft., V-81-S-111. (Deferred from July 28, 1981 at request of applicant & for notices).

The required notices were in order. Mr. Raoul Lopez of 9519 Vandola Court in Burke informed the Board that he had a rectangularly shaped lot and was seeking relief from the Ordinance to compensate for the addition. In response to questions from the Board, Mr. Lopez stated that he had an existing carport and wished to extend the carport and then enclose the entire structure. Chairman Smith advised Mr. Lopez that the carport met the minimum and there was no problem with it. He stated that the only problem was that the applicant wanted the addition. Chairman Smith advised Mr. Lopez that he did not need a variance for the carport. Mr. Lopez responded that the total addition would be enclosed. Mrs. Day inquired as to the reason for the request. Mr. Lopez replied that he wanted a large garage. Mrs. Day inquired if his vehicles fit into the present garage. Mr. Lopez stated that he wanted to have a shop area, work bench and tools. Mrs. Day inquired if Mr. Lopez's home had a basement and was informed it did. However, he stated that it was finished into a rec room. In further response to questions from the Board, Mr. Lopez stated that he had owned the property for three years. Chairman Smith inquired if this was a new subdivision and was informed it was five years old. Mrs. Day inquired as to what was located on lot 230 since the proposed garage would be 4 ft. from the line. Mr. Lopez stated that his neighbor did not object.

There was no one to speak in support and no one to speak in opposition to the request.

R E S O L U T I O N

In Application No. V-81-S-111 by RAOUL W. & PHYLLIS W. LOPEZ under Section 18-401 of the Zoning Ordinance to allow extension and enclosure of existing carport to 4.5 ft. from side lot line such that total side yard would be 16.7 ft. (8 ft. min. but total of 20 ft. min. side yard req. by Sect. 3-307) on property located at 9519 Vandola Court, tax map reference 78-3((5))231, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 8,490 sq. ft.
4. That the applicant's property is exceptionally irregular in shape with converging lot lines.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

RESOLUTION

112

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 112, September 22, 1981, Scheduled case of

10:15 A.M. CLIFFORD A. TAYLOR, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that the addition of a shade house & trailer to appellant's plant nursery requires special exception approval by the Board of Supervisors, located 12908 Lee Highway, 55-4((1))2, Springfield Dist., R-1, 4.77 ac., A-81-S-009. (DEFERRED FROM JULY 16, 1981 FOR NOTICES).

For testimony received at the appeal hearing, please refer to the verbatim transcript on file in the Clerk's Office.

At the conclusion of the public hearing, Mr. Hyland moved that the Board of Zoning Appeals uphold the decision of the Zoning Administrator. Mrs. Day seconded the motion and it passed by a vote of 3 to 2 (Messrs. Yaremchuk & DiGiulian).

//

Page 112, September 22, 1981, Scheduled case of

11:00 A.M. KENNETH S. HARRIS, appl. under Sect. 18-401 of the Ord. to allow a 10 ft. fence to be constructed on one side of property (8 ft. max. height for a fence in any yard of an industrial use req. by Sect. 10-105), located 7956 Twist La., Fullerton Industrial Park Subd., 98-2((9))3, Springfield Dist., I-5, 116,026 sq. ft., V-81-S-083. (DEFERRED FROM JUNE 23, 1981 FOR NOTICES AND FROM JULY 30, 1981 FOR LACK OF REPRESENTATION.)

Mr. Kenneth S. Harris of 8101 Hudson Falls Way in Springfield informed the BZA that he was the property owner. He stated that he was also the tenant and had some outside storage that had exceeded the visibility of his neighbors. Therefore, he wanted to build a 10 ft. screening fence to shield the storage. He informed the Board that the storage he had was over 8 ft. Chairman Smith inquired if the neighbors were in an industrial area and was informed they were. Chairman Smith stated that fences in industrial areas were not intended to shield excess storage from view but to deter entrance to the property. Mr. Harris informed the Board that he had an agreement with the people in the Industrial Park that he could store his containers to 10 ft. if he shielded them.

Chairman Smith advised Mr. Harris that there was considerable opposition to the request. Mr. Hyland suggested that the Board allow some time for Mr. Harris to review the opposition letters since he was unaware of it. The Board recessed for five minutes to allow Mr. Harris an opportunity to review the file. Upon reconvening the meeting, Mr. Harris informed the Board that he had read the opposition letter and spoken to the gentleman who had written it. Mr. Harris guaranteed the BZA and the gentleman that the fence would be constructed on his property. Chairman Smith stated that he had no problem with working out the problems with the opposition but he had yet to hear the justification or the hardship for the granting of the variance. Mr. Harris stated that his hardship was more of the covenants and not the land use. Chairman Smith stated that as far as he was concerned, Mr. Harris should be in the courts because of the code limitation of 8 ft. Mr. Harris stated that he was requesting a variance. He indicated that he had constructed an 8 ft. fence on the west side of his property to shield the containers from the Sarasota area.

Mr. Hyland inquired if an 8 ft. fence would shield the containers at the proposed location for the 10 ft. fence. Mr. Harris explained to the BZA that on the west side of his property was the Sarasota shopping center which had a 4 ft. berm. He constructed the 8 ft. fence on top of the berm which shielded most of the storage area.

There was no one else to speak in support of the application. Mr. Mike Giguiere spoke in opposition. Mr. Giguiere stated that he had filed a letter outlining his client's position with respect to the variance. Mr. Giguere represented Boston Properties which was the adjoining property owner. He stated that what they were concerned about was the problem of encroachment that had taken place over a number of years. Mr. Giguere stated that he believed the problem had resolved as the applicant had indicated that the fence would only be constructed on his property. Mr. Yaremchuk stated that the BZA had a certified plat of the property. Mr. Giguere stated that he had examined the certified plat and it appeared to be correct. Mr. Hyland inquired if Boston Properties had any objections other than those represented in their letter dated July 28th with regard to the 10 ft. fence. Mr. Giguere responded that they did not. Mr. Hyland inquired about the shielding problems. Mr. Giguere

113

stated that the variance would help Mr. Harris with the shielding as he had topographic problems with his property. Mr. Hyland inquired if Boston Properties intended to erect a fence and was informed they would landscape it for screening purposes. Mr. Giguere stated that the property was designed as an industrial park. There were two buildings already contracted for which would not be heavy industrial uses. They would be confined to warehouse storage which should not cause any problems with the neighbors.

There was no one else to speak in opposition to the request.

R E S O L U T I O N

In Application No. V-81-S-083 by KENNETH S. HARRIS under Section 18-401 of the Zoning Ordinance to allow a 10 ft. fence to be constructed on one side of property (8 ft. max. height for a fence in any yard of an industrial use req. by Sect. 10-105) on property located at 7956 Twist Lane, tax map reference 98-2((9))3, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is I-5.
3. The area of the lot is 116,026 sq. ft.
4. That the applicant's property has exceptional topographic problems. And that along a portion of the property there are 10 ft. containers stored on the property which is lower than another portion of the property that is shielded by a 8 ft. fence which is sufficient to block the line of sight of the 10 ft. containers that are stored on the property. And, in addition, there are covenants that require the storage containers to be shielded.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Chairman Smith).

Page 113, September 22, 1981, Recess

At 12:25 P.M., the Board recessed for lunch and reconvened at 1:50 P.M. to continue with the scheduled agenda.

//

Page 113, September 22, 1981, Scheduled case of

11:15 A.M. MEHRDAD & CHERI NIKZAD, appl. under Sect. 18-406 of the Ord. to allow deck attached to dwelling to remain 14.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 6504 Twin Oak Pl., Sleepy Hollow Subd., 51-3((7))9, Mason Dist., R-1, 28,325 sq. ft., V-81-M-085. (Deferred from June 23, 1981 at request of applicant and from July 30, 1981 for Notices.)

114

The required notices were in order. Mr. Nikzad of 6504 Twin Oak Place in Falls Church informed the Board that the basis for his variance was that when he purchased the lot, he did not realize it was on soft ground. He stated that he was supposed to have a concrete porch. There was a hill above his property and all the water ran down the hill. He stated that he had to put in separate footings in order to build the house which cost him a lot of money.

In response to questions from the Board, Mr. Nikzad stated that he had built the deck. He informed the Board that he had asked the builder to construct a concrete porch but was informed it would break because of the soil conditions and the ground being too soft. Mr. Nikzad informed the Board that he was unaware that a permit was needed to build the deck. He stated that his contractor had informed him that he could build a wooden deck above ground. Chairman Smith inquired as to who had constructed the deck and was informed it had been the construction company. Mr. Nikzad stated that the deck was constructed and one corner was too close to the property line.

Chairman Smith stated that it was very difficult for him to believe that Mr. Nikzad had a flooding problem from an adjacent property as it just did not happen in a designed subdivision. Mr. Nikzad stated that the property was in a floodplain area which he did not realize until many months afterwards. There was a creek which flooded every time it rained. Mrs. Day asked for clarification about the water runoff from the neighbor's lot. Mr. Nikzad responded that the water came from Mr. Glade's property and some of the other neighbors. He informed the Board that the houses were built 35 years ago. Mr. Nikzad stated that his property had been a vacant lot and he had built his house two years ago. He stated that he did not realize that it was swamp.

Mrs. Day inquired as to what was located to the rear of Mr. Nikzad's property on lot #1. Mr. Nikzad stated that there was a house about 300 ft. from the property line. Mrs. Day inquired if Mr. Nikzad had discussed his plans for the deck with the neighbor. Mr. Nikzad responded that he sent him a certified letter.

There was no one else to speak in support of the application and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-M-085 by MEHRDAD & CHERI NIKZAD under Section 18-406 of the Zoning Ordinance to allow deck attached to dwelling to remain 14.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412) on property located at 6504 Twin Oak Place, tax map reference 51-3((7))9, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 28,325 sq. ft.
4. That the applicant's property has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property and has an unusual condition of soil soil due to flooding of the property from a patio on adjacent property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

115

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Chairman Smith).

Page 115, September 22, 1981, Scheduled case of

11:30 A.M. JEFFREY A. & CATHERINE R. FERNANDEZ, appl. under Sect. 18-401 of the Ord. to allow subd. into two lots with proposed corner lot 17B having width of 24 ft. (175 ft. min. lot width req. by Sect. 3-106), located 7701 Hooes Rd., Presidential Hills Subd., 89-4((2))117, Springfield Dist., R-1, 4.7488 ac., V-81-S-151.

Mr. Jeffrey Fernandez of 7701 Hooes Road in Springfield informed the Board that the justification for the proposed subdivision was to allow he and his wife to build a house on the back part of the property. He proposed to create two lots and sell the front lot with the existing house on it. This would give him the necessary money to build a house on the rear of the property. In response to questions from the Board, Mr. Fernandez stated that he had lived on the property for 3½ years. Mr. DiGiulian inquired as to why the lot could not be created with frontage on Beechwood Lane. Mr. Fernandez responded that he had talked to Oscar Hendrickson and had been informed that the variance application process was a more legal process which would allow his neighbors to contest if their rights were being violated. Mr. Fernandez stated that there was a public right-of-way line. Chairman Smith stated that the applicant did not need a pipestem as he could subdivide the property by right. Mr. Fernandez stated that the property would be divided into two lots. One acre with the house on it would be sold. Mr. Fernandez stated that he planned to build a house on the remaining 3½ acres. Mrs. Day inquired as to why Mr. Fernandez could not just drive up Beechwood Lane to get to the rear of his property. Mr. Fernandez responded that Mr. Hendrickson preferred that the subdivision be considered through a public hearing process. He stated that if he subdivided by right, it would not be advertised and the neighbors would not an opportunity to speak out against it.

Mr. Covington advised the BZA that Beechwood Lane was a private street. Mr. Henrickson had informed him that the applicant would have to bring the road up to State standards if he subdivided by right. Beechwood Lane was not in the state system and was not a state maintained road. Mr. Fernandez informed the Board that it was his belief that Beechwood Lane was maintained by the County. Mr. DiGiulian stated that since Beechwood was not improved up to state standards, that the rear lot would have to have frontage on a state maintained road. Chairman Smith inquired as to the number of lots now served by the private road and was informed there were about six or seven lots on it. Chairman Smith inquired if the BZA wanted to go with the pipestem request. Mr. DiGiulian responded that he felt it was a hardship for the applicant to have to build the road for 1,000 ft. just for one lot. Chairman Smith stated that he did not see how the applicant could not use the private road. Mr. Hyland stated that Mr. Hendrickson had already indicated what would be required for the applicant to use the private road. Mr. DiGiulian stated that it would cost approximately $100 per foot for the applicant to build the road.

There was no one else to speak in support and no one to speak in opposition.

Page 115, September 22, 1981 Board of Zoning Appeals
JEFFREY A. & CATHERINE R. FERNANDEZ

R E S O L U T I O N

In Application No. V-91-S-151 by JEFFREY A. & CATHERINE R. FERNANDEZ under Section 18-401 of the Zoning Ordinance to allow subdivision into two lots with proposed corner lot 17B having width of 24 ft. (175 ft. min. lot width req. by Sect. 3-106) on property located at 7701 Hooes Road, tax map reference 89-4((2))117, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 4.7488 acres.
4. That the applicant's property is exceptionally irregular in shape including long and narrow.

116

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 116, September 22, 1981, Scheduled case of

11:40 A.M. NICHOLAS G. MENTAVLOS, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 7.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 2108 Sheriff Ct., Barristers Place Subd., 38-1((18))257, Centreville Dist., R-3, 14,004 sq. ft., V-81-C-152.

Mr. Nicholas Mentavlos of 2108 Sheriff Court in Vienna informed the Board that his justification for the requested variance was convering lot lines. He informed the Board that he had owned the property for eight years. Chairman Smitn inquired as to what the applicant proposed to use the addition for and was informed that Mr. mentavlos collected vintage automobiles. He stated that the addition would be used to store them for security purposes. Mr. Mentavlos stated that he had an existing carport which he wished to expand and enclose. Mr. Hyland inquired as to the topographic conditions of the property. Mr. Mentavlos responded that at the rear of his property was hill which went straight up. He further explained that his property narrowed at the rear. He stated that there was steep grade from the carport to the rear of the property of about 25%. Mr. Hyland inquired if the carport wrapped around the dwelling and was informed that was a porch which had already been added. Mr. Mentavlos informed the Board that before he started the project he had talked to his neighbors and gotten approval from his homeowner's association. He stated that no one was objecting to his plans. Mr. Mentavlos stated that there was a slab behind his carport which he wished to expand and enclose to make his home more presentable. Mr. Hyland stated that the applicant had a double, double carport which he was going to enclose.

Chairman Smith informed the applicant that he could not construct the 14 ft. addition without a variance. Mr. Mentavlos stated that he already had the addition. Chairman Smith stated that it was only a slab. Chairman Smith stated that the applicant built the addition without a permit. Mr. Mentavlos stated that he had a permit. Chairman Smith stated that the applicant did not have a permit to expand into the side yard area as he had to meet a 12 ft. setback. Mr. Mentavlos responded that he had been told that he did not have to meet the setback for a carport but only for a closed structure. Chairman Smith stated that the applicant was asking for a structure. Mr. Mentavlos responded that he was only asking for an enclosure. Mr. Hyland stated that the structure was twice the normal size. However, he stated that the applicant was able to construct the second carport and now wanted to enclose it. He needed a variance for the whole structure. Chairman Smith stated that it was a self-created hardship. He stated that the applicant had use of the structure as it presently existed. Now, the applicant wanted to make it an addition. Mr. Mentavlos informed the Board that when he started construction, he was given the green light to build and enclose the structure. Then when he talked to the Zoning Office, he was informed that the zoning was incorrect in the computer and that he would require a variance. Mr. Covington informed the BZA that part of the subdivision was cluster and part of it was straight. Mr. Covington stated that if the property had been cluster, the applicant would only have needed ½ ft. variance. The property had been erroneously listed in the computer as cluster.

Mr. Mentavlos informed the Board that everything he had done was done in the best interest of doing things right. He stated that he had inspectors out to check the construction. Mr. Covington informed the Board that Mr. Mentavlos had done everything the County had asked him to do. Chairman Smith indicated that the wording on the application was very deceiving and the photographs were incorrect. He stated that the plats and the wording in the advertisement were confusing.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

117

In Application No. V-81-C-152 by NICHOLAS G. MENTAVLOS under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307) on property located at 2108 Sheriff Court, tax map reference 38-1((18))257, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3
3. The area of the lot is 14,004 sq. ft.
4. That the applicant's property has exceptional topographic problems and this is the most logical location to put the addition.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 2 (Mr. Smith and Mrs. Day).

Page 117, September 22, 1981, Scheduled case of

11:50 A.M. FOSTER J. RAPP, appl. under Sect. 18-406 of the Ord. to allow partially-built barn for sheltering horse to be completed and to remain located 21.4 ft. from side lot line (40 ft. min. distance from side lot line req. by Sect. 10-105), located 10603 Creamcup La., Woodfield Subd., 7-3((1))4, Dranesville Dist., R-E, 2.0 ac., V-81-D-154.

As the required notices were not in order, the variance was deferred until November 3, 1981 at 10:15 A.M.

//

Page 117, September 22, 1981, Scheduled case of

12:00 NOON RICHARD GUTMANN, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport to 10 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 3405 Surrey La., Holmes Run Acres, 60-1((2))2, Providence Dist., R-3, 14,260 sq. ft., V-81-P-155.

As the required notices were not in order, the Board deferred the variance until November 3, 1981 at 10:30 A.M.

//

Page 118, September 22, 1981, Scheduled case of

12:10 P.M. CHESTERBROOK SWIMMING CLUB, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into two lots with proposed lot 2 having width of 6.75 ft. (80 ft. min. lot width req. by Sect. 3-306), located 1812 Kirby Rd., D. P. Divine Properties Subd., 31-3((1))60, Dranesville Dist., R-3, 3.9215 ac., V-81-D-158.

118

Ms. Janice Gary, President of Chesterbrook Swimming Club, residing at 7011 Hollywood Drive in McLean. She informed the Board that the swim club had purchased the four acres adjacent to the club several years ago. The property was a panhandle shape. She stated that the club had been through a series of activities to consider future expansion for tennis courts and determined that the panhandle part of the lot was not usable for club purposes and would make a better residential lot. Ms. Gary informed the Board that the club wished to subdivide the property into two lots, one being for a residential lot and the other for club purposes. Ms. Gary explained to the Board that all of the conditions of the R-3 zone could be met except for street frontage. She stated that the residential lot was next to a residential building on the Carlson property. Ms. Gary stated that the club could put up a good buffer between the club and the residential property. With regard to access to the residential lot, there was an outlet road going down the panhandle next to the Carlson property.

Ms. Gary advised the Board that the club had discovered a mistake with respect to the plats relating to the pipestem driveway. She stated that the 6 ft. shown in front of the Carlson property was incorrect. Ms. Gary stated that the club would include 12 ft. and 25 ft. utility easement. Chairman Smith stated that the Board accept the change. Ms. Gary advised that the club had notified all adjoining property owners and most of them were in favor of the lot being used as a residence. She stated that there would be a common driveway between the Carlson property and the residence. The Carlsons had sent in a favorable response and did not object to the plans. Chairman Smith advised Ms. Gary that if the BZA did approve the variance, the club would have to submit revised plats with respect to the pipestem driveway.

There was no one else to speak in support. The following persons spoke in opposition. Ms. Marjorie M. Brown of 6405 Divine Street stated that she was the owner of lot 9 on the plat which was on the other side of the dogleg. She informed the Board that she was not really in opposition as she belonged to the swim club. The subdivision would help the club's finances. However, she stated that she had a few questions. She stated that there was still enough property left that she wanted to be assured that at some future date it would not be subdivided again. Chairman Smith advised Ms. Brown that that normally did not happen. Ms. Brown stated that she was concerned about drainage and flooding as she was on the downhill slope and on floodplain which had problems in the past. She stated that if a house was back there it would not bother her a bit as long as the property was not denuded. She stated that she was on a well and was concerned about contamination of sewage or septic fields. Chairman Smith inquired if Ms. Brown's property was on septic and was informed it was not. Chairman Smith indicated that he did not believe the subdivided lot could be on septic either.

During rebuttal, Chairman Smith queried Ms. Gary about the existing special permit for the swim club. Ms. Gary informed the Chairman that the special permit was on the old club property and did not include the new four acres. She stated that the club had applied for the special permit prior to its purchase of the four acres and no part of the four acres was included in the special permit. The club consisted of two swimming pools and four tennis courts. Chairman Smith inquired as to what the club intended to do with lot 1. Ms. Gary stated that the master plan called for a green screening at the back of lot 1. The front part would be used for additional tennis courts and a tennis court building.

Page 118, September 22, 1981 Board of Zoning Appeals
CHESTERBROOK SWIMMING CLUB, INC.

R E S O L U T I O N

In Application No. V-81-D-158 by CHESTERBROOK SWIMMING CLUB, INC. under Section 18-401 of the Zoning Ordinance to allow subdivision into two lots with proposed lot 2 having width of 6.75 ft. (80 ft. min. lot width req. by Sect. 3-306) on property located at 1812 Kirby Road, tax map reference 31-3((1))60, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 3.9215 acres.
4. That the applicant's property is exceptionally irregular in shape, including narrow.

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

R E S O L U T I O N

119

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. The pipestem driveway adjacent to the Karlson property shall be a minimum of 12 ft. in width and approval is subject to submission of revised plats showing the 12 ft. pipestem acess.

Mr. Hyland seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 119, September 22, 1981, Scheduled case of

12:20 P.M. MORRIS R. & JO AN W. BOSIN, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport to 6.6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 8102 Hatteras La., Ravensworth Farm Subd., 79-2((3))(22)15, Annandale Dist., R-3, 10,800 sq. ft., V-81-A-159.

As the required notices were not in order, the Board deferred the variance until October 21, 1981 at 12:40 P.M.

//

Page 119, September 22, 1981, Scheduled case of

12:30 P.M. BURKE LAKE ASSEMBLY OF GOD CHURCH, appl. under Sect. 3-103 of the Ord. to permit child care center within existing church located 9998 Pohick Rd., 88-1((1))6 & 7, Springfield Dist., R-1, 14.2486 ac., S-81-S-052.

Mr. Norman Lance of 10000 Pohick Road was the pastor of the Burke Lake Assembly of God church. He informed the Board that the church was requesting a special permit to operate a child care center for children, ages 3 through 5. The hours of operation would be from 7 A.M. until 6 P.M., five days a week. Chairman Smith inquired as to why the church's special permit was not amended to allow the child care center. Mr. Covington stated that it was a different use. Chairman Smith asked that at some time in the future, the BZA discuss the possibility of allowing churches to operate child care center under one special permit. In response to further questions from the Board, Mr. Lance stated that the proposed traffic would generate about 270 vehicle trips per day with a maximum capacity of 80 children serving the south Springfield area of the County. The child care center would be operated within the church facility located at 9998 Pohick Road. The center would be operated twelve months a year.

There was no one else to speak in support or in opposition to the application.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-S-052 by BURKE LAKE ASSEMBLY OF GOD CHURCH under Section 3-103 of the Fairfax County Zoning Ordinance to permit child care center within existing church on property located at 9998 Pohick Road, tax map reference 88-1((1))6 & 7, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 22, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 14.2486 acres.
4. That compliance with the Site Plan Ordinance is required.

RESOLUTION

120

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance; and

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

1. This approval is granted for the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit is granted subject to the provisions of S-269-77 not altered by this resolution.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 120, September 22, 1981, After Agenda Item

La Danse Academy: The Board was in receipt of a request from Ms. Regla Armengol, Director of the La Danse Academy of Ballet located at 3300 Glen Carlyn Road. Ms. Armengol was asking the Board to extend the special permit which was due to expire in November for a period of six months in order to avoid going through the public hearing again. She had indicated in her letter that the business would be discontinued after that time as she was leaving the area. Chairman Smith stated that the BZA had only granted the permit for a period of three years and could not extend it without a public hearing. He suggested that Ms. Armengol file an amendment of her existing special permit which was the shortest way but it would still require a public hearing.

//

Page 120, September 22, 1981, After Agenda Item

Church of the Good Shepherd: The Board was in receipt of a revised plat for the Church of the Good Shepherd seeking approval as minor engineering changes. As there was not anyone present to explain the changes to the Board, the Chairman directed that the plat be resubmitted with the changes outlined in red and a letter outlining the reasons for the changes.

//

Page 120, September 22, 1981, Scheduled case of

1:00 P.M. PAUL J. & THERESA M. KLAASSEN T/A SUNRISE TERRACE, INC., appl. under Sect. 3-203 of the Ord. to amend Special Permit granted June 11, 1957 and amended May 17, 1960 for nursing facilities for a maximum of 27 patients, to permit change of permittee, located 10322 Blake Lane, 47-2((1))70, Providence Dist., R-2, 1.7465 ac., S-81-P-051. (DEFERRED FROM SEPTEMBER 15, 1981 FOR ADDITIONAL INFORMATION REGARDING SITE PLAN CONTROL.)

Ms. Jane Kelsey informed the BZA that there had been two main questions at the previous hearing. One was whether this application was an amendement to an existing special permit or a new special permit. The original special permit was granted in 1957 to Mr. and Mrs. Fowler which continued to operate until January 1981. Ms. Kelsey informed the BZA that Sect. 8-004 of the Zoning Ordinance stated that it was a permitted use. Paragraph one of Sect. 8-015 had stated that it was a valid use for an indefinite period of time and could be amended to reflect new permittees.

121

The other question was whether this application came under site plan. Ms. Kelsey stated that paragraph 4 for all Group 3 uses required that before application was made for a building permit, all uses were subject to the approval of a site plan prepared in accordance with Article 17. Ms. Kelsey informed the Board that this particular use would require a building permit and, therefore, the provisions of Article 17 would apply. Mr. Yaremchuk inquired as to what building permit was required for the use. Ms. Kelsey responded that a team inspection had been made and there were interior changes necessary. She stated that the Zoning Ordinance did not distinguish between interior or exterior building permits. Mr. DiGiulian stated that the wording referred to a structure. He indicated that he did not see how this use could come under site plan control. Chairman Smith stated that the use was controlled by state conditions. He stated that the use as it existed originally and in the past did not meet the State Building Code of today. Mr. DiGiulian stated that the wording in Article 17 dealt with a new structure. Ms. Kelsey stated that it would be the prerogative of Design Review to require site plan if it so chose. Mr. DiGiulian stated that the intent of Article 17 had been with regard to structures. He stated that if the improvements to the building were all interior and no site work was done then he could not see how the use would come under site plan control. Chairman Smith stated that he would not argue the issue as he was only abiding by the decision of the Zoning Administrator. Mr. Yaremchuk inquired if the Zoning Administrator had stated that this use came under site plan control. Ms. Kelsey responded that Art Rose, Steve Reynolds and Phil Yates had all indicated that the use should come under site plan. Mr. Yaremchuk stated that "should" was not mandatory. Chairman Smith stated that the requirement could be waived under the site plan process.

Mr. Hyland inquired if a building permit was necessary for this use. Chairman Smith stated that a building permit was required for the inside work. Mr. Hyland stated that he had a problem with it. Mr. Yaremchuk stated that he did not agree with the rule. Chairman Smith stated that if a building permit was required then it came under site plan.

Ms. Kelsey informed the Board that there was also an additional standard for nursing facilities which referred back to medical care facilities under Section 9-308 which stated that the facility should be referred for review to the Health Care Advisory Board for a recommendation prior to the BZA action. Ms. Kelsey informed the BZA that the application had not been referred to the Health Care Advisory Board and they had indicated that they could review it for two weeks. She stated that they would review it on Monday, October 5, 1981. Mr. Hyland stated that this was the first time that the BZA had been given information that the application should have been referred to some other body for review. He stated that the BZA did have some time constraints. Ms. Kelsey stated that this was a different type of nursing facility or domiciliary care and should go before the Health Care Advisory Board. Mr. Hyland stated that it had not been one of the matters for the deferral at the time of the last hearing. Mr. Hyland suggested that the BZA take some action today and if the HCAB's recommendation was unfavorable that the matter be brought back to the BZA on October 6th. Chairman Smith stated that he was not prepared to vote as he did not think it would expedite the application for the applicant. Besides, if the BZA took action to approve the use and the HCAB recommendation was unfavorable there would not be anything the BZA could do about it. Mr. DiGiulian was concerned that the application had been filed for several months and the applicant was not made aware of the additional standards until today. He inquired that if the applicant came back on October 6th was the BZA going to require something else of the applicant. Mr. Hyland asked that the applicant be given the opportunity to speak.

Mr. Paul Klaassen of Falls Church informed the Board that he had only learned about the necessity of a recommendation from the Health Care Advisory Board at the hearing. He stated that the BZA did not have to abide by the decision of the Health Care Advisory Board. He stated that the Health Care Advisory Board was put into existence to regulate State and Federal funds. In his case, it was all private money. There was not any County or State funds involved. He stated that he was not sure who the staff was trying to protect. Mr. Klaassen stated that he were to open up a hobby shop it would not be referred to any other agency. Mr. Hyland inquired if the Ordinance made a distinction about federal funds and was informed it did not. Chairman Smith stated that the Health Care Advisory Board was established to insure that there would be adequate medical facilities for the needs.

Mr. Yaremchuk inquired as to whose responsibility it was to notify the Health Care Advisory Board. She responded that it was requirement of the Group III uses and that the staff should have notified them. Mr. Hyland stated that he had been advised that it took an interpretation by the Zoning Administrator to place the application in this category. Mr. Klaassen advised the BZA that he had been through the Code several times as well as the BZA staff. He stated that the staff had not come across that provision previously. Chairman Smith inquired if it was a specific requirement that the Health Care Advisory Board review the application. Mr. Yates replied that it was an Ordinance requirement. Chairman Smith recommended that the BZA defer the application. Mr. Yates advised the BZA that the HCA Board could meet and develop its recommendation by October 5th. He stated that he would instruct his staff not to take any action on a building permit. Mr. Yates informed the Board that he did not see the advantage of the BZA taking action on the application today. Mr. Hyland stated that he understood the Zoning Administrator's reluctance to accept the recommendation he had made of taking action and then getting the recommendation from the HCA Board.

122

Mr. Hyland moved that the Board of Zoning Appeals proceed with the hearing on the application and take action on it but defer decision on the matter until October 6, 1981 and to communicate that fact to the Health Care Advisory Board. Chairman Smith asked to discuss the wording of the motion. He agreed with the gesture of the resolution but stated that it needed to categorically state that the BZA was prepared to make a decision on the application on October 6th. Mr. Hyland stated that he only wanted to state that the Board had received testimony and had no problem with it.

Mr. Klaassen inquired as to why the HCA Board was involved in the process. Chairman Smith replied that it was a requirement under the Ordinance and the BZA had to abide by it. He stated that there were a lot of things in the world that someone might not agree with. Mr. Yates responded that the provisions were set forth in the Zoning Ordinance. He stated that the applicant had a responsibility to know the Zoning Ordinance as the staff could not do all of the work for the applicant.Mr. Covington advised the BZA that he had reviewed the application with the applicant. He stated that he and Mr. Klaassen felt that the use was ongoing and, therefore, did not require review by the Health Care Advisory Board. Mr. Covington stated that it was a non-conforming use.

Chairman Smith called for the vote on Mr. Hyland's motion. Mr. Klaassen inquired about the parking requirements. Chairman Smith stated that parking was required by the Ordinance. Ms. Kelsey stated that one space for every three residents plus additional parking spaces would be required. She stated that the applicant had plenty of room on the property to add the additional parking. Chairman Smith inquired if four employees met the State requirements for the facility. Mr. Klaassen stated that there were not any specific amount required. He stated that one person needed to be present in the building and awake at all hours. Mr. Klaassen informed the Board that he was unclear as to the site plan control. He inquired as to what the Board had decided about site plan and road improvements.and when he would be required to put in sidewalks. Chairman Smith stated that he did not know. Mr. Klaassen inquired if the BZA had the authority to waive the requirements. Chairman Smith stated that the BZA did not have the authority to waive the Site Plan requirements. Mr. Klaassen inquired if he would be required to pay for road improvements. Mr. Yaremchuk responded that he would not require the applicant to dedicate. The vote on the motion to defer passed by a vote of 5 to 0. The matter was deferred until October 6, 1981 at 2:15 P.M.

//

Page 122, September 22, 1981, After Agenda Items

Rock Hill Church of God: S-80-S-070: The Board was in receipt of a request from Pastor Danny G. Workman of the Rock Hill Church of God for approval of a smaller size building addition than had originally been approved. The orginal square footage of the building addition was 1,496 sq. ft. but because of financing problems, the church was seeking approval for a smaller size addition of 1,456 sq. ft. It was the consensus of the Board to approve the request as a minor engineering change.

//

Page 122, September 22, 1981, After Agenda Items

Thomas Quagley: The Board was in receipt of a request from Mr. Thomas Quagley for an out-of-turn hearing on his variance application due to the fact that it would be necessary to cut into his roof during the inclement weather. It was the consensus of the Board to grant the out-of-turn hearing and the variance was scheduled for Wednesday, October 21, 1981 at 1:00 P.M.

//

The Board members noted that it was Mr. Covington's birthday.

// There being no further business, the Board adjourned at 4:40 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith
DANIEL SMITH, CHAIRMAN

Submitted to the Board on May 17, 1983

APPROVED: May 24, 1983
Date

123

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Night, September 29, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 8:05 P.M. and Mrs. Day led the prayer.

MATTERS PRESENTED BY BOARD MEMBERS: Mr. DiGiulian made a motion that the Board of Zoning Appeals rescind the action taken at its meeting of July 28, 1981 regarding variance application V-81-D-107. Mrs. Day seconded the motion and it passed by a vote of 5 to 0.

//

Page 123, September 29, 1981, After Agenda Items

B. F. Saul Real Estate Investment Trust, V-81-D-107: The Board was in receipt of a letter from Ms. Minerva W. Andrews regarding the variance application granted to B. F. Saul Real Estate Investment Trust informing the BZA of its abandonment of the variance due to the pending litigation. Ms. Andrews advised the BZA that B. F. Saul Real Estate Investment Trust had decided to build separate projects on the C-4 and C-7 land in conformance with the Zoning Ordinance. Mr. DiGiulian moved that the Board of Zoning Appeals allow the abandonment or withdrawal of the variance application as requested. Mr. Hyland seconded the motion and it passed by a vote of 5 to 0.

//

Page 123, September 29, 1981, Scheduled case of

8:00 P.M. RECONSIDERATION: LEILA J. & ROBERT M. GAINER, appl. under Sect. 18-401 of the Ord. to allow subd. into two lots, one of which would have a width of 12.15 ft. & the other a width of 25.97 ft. (150 ft. min. lot width req. by Sect. 3-106), located 6419 Chapel View Rd., Chapel View Estates Subd., 76-4((5))3, Centreville Dist., R-1, 5 ac., V-81-C-046. (DEFERRED FROM JULY 7, 1981 FOR FULL BOARD).

Chairman Smith informed the Board of a letter requesting deferral of the application. Mr. Paciulli stated that he was aware of the opposition and the request for deferral. Chairman Smith stated that the Board would proceed with the hearing. Mr. Chip Paciulli of 307 Maple Avenue in Vienna represented the applicants. He stated that the Gainer property had very unusual physical conditions as the lot was very narrow and unusually configured. Mr. Paciulli further stated that the property had topographic problems as the lot was cut in half by drainage and had steep slopes. In addition, he stated that another unusual condition was that the soil was extremely limited so he had to limit the drain fields. Mr. Paciulli stated that any of the conditions by itself would warrant the granting of a variance. Mr. Paciulli stated that during the previous hearing, several factors had been brought up. He stated that he had new evidence to present to the Board.

There had been a statement made there was not adequate sight distance for the property. Mr. Paciulli presented the Board with a copy of the approval from VDH&T for the proposed entrance. Another concern had been access from an adjoining subdivision from Fairfax Street to Chapel Road. Mr. Paciulli stated that this had been an area of concern to the developers. At the time, the Department of Environmental Management had required that a road be extended. Mr. Paciulli stated that he had convinced the County that the road would not be used. DEM had reversed its position and did not plan a connection any longer.

With regard to reference to the environmental comments, Mr. Paciulli stated that the variance would be in conformance with the standards of DEM. He stated that the character of the neighborhood was a large consideration and one that the Board seemed to "key" in on when it made its motion. Mr. Paciulli advised the Board that there were many lot sizes in the Chapel View Road corridor. This subdivision would have two 2½ acre lots. There would not be any impact on Chapel View Estates. Mr. Paciulli presented the Board with a petition in support of the subdivision as well as an affivadit from the Design Review engineer.

Mr. Robert Gainer of 6419 Chapel View Road spoke in support of the application. Mr. Gainer stated that the variance was for the reasonable use of his property. He stated that at the time of purchase, it had been written to hold the entire five acres intact. However, since that time, the surrounding property had been developed into a smaller size. Mr. Gainer stated that he shared common property lines with that new subdivision. He advised the Board that the nature of the area had changed. He stated that due to the configuration and topographic problems, his property did not provide him with abundant natural buffers to the new development. Mr. Gainer informed the Board that the area was not totally developed in five acres but a mixture. He stated that he was abiding by conforming to the normal lot size. Mr. Gainer informed the Board that there had been discussions about the road to Fairfax Station subdivision. He stated that any kind of road would not pending on his application. With regard to the problem of safety, he stated that it had been taken care of by the approval of his proposed entrance by the Virginia Department of Highways & Transportation. Mr. Gainer asked that the BZA weigh the testimony and the factors of the petition and not listen to hearsay. He informed the Board that there was support for the subdivision. He stated that he

124

was a resident of the comunity and would not do anything to jeopardize his holdings. Mr. Gainer stated that the part of the lot in question would not have any contact with the neighbors at all. The other part of the lot contained his dwelling and would remain unchanged.

Ms. Nancy Johnson of 408 University Drive in Fairfax represented R. W. Clement. She stated that Mr. Clement owned 7 acres of ground adjacent to the Gainer property. They felt that the requested subdivision was a reasonable use of the property. She stated that there was no reason to be concerned about upkeep and maintenance of the pipestem. The property was overgrown with thick woods and the requested subdivision would be an improvement.

Mr. Vince Pizzurro of 11401 Chapel Road informed the Board that he was the owner of lot 7 across the street from the Gainer property. He informed the Board that he had submitted a petition back in June which had the signatures of all of the property owners in Chapel View Estates. Mr. Pizzurro stated that the petition submitted by Mr. Gainer with signatures in support did not live nearby.

Mr. Pizzurro informed the Board that Mr. Clement owned 7 acres of land which were also up for a variance request. Mr. Pizzurro stated that the property owners had made their views known when they appeared in July and again this evening. He stated that based on the description of the variance and the variance standards, none had been satisfied. Mr. Hyland stated that the applicant would disagree with that statement as he had cited several reasons for the justification of the granting of the variance. Mr. Pizzurro responded that Mr. Gainer had purchased the property for one house on five acres. He was now requesting permission for a second house. Mr. Hyland inquired as to what understanding there had been that the property remain intact. He inquired if there were any covenants. Mr. Pizzurro stated that the property was sold for one house on five acres. There were not any covenants, just the intent that the land remain as five acres. Mr. Pizzurro informed the Board that the drainage ditch and the configuration of the property had not changed since Mr. Gainer purchased the property.

Mr. Hyland stated that he had a reason for inquiring whether there were any covenants. Mr. Pizzuro had indicated that Mr. Gainer had reneged on his contract. Mr. Hyland stated that if there was a legal requirement to keep the five acres intact, that was one thing. However, he stated that if everyone bought with five acres then the question arose as to whether one could change one's mind. Mr. Hyland inquired as to how it was binding to keep the property intact when there was not any legal requirement to do so. Chairman Smith responded that the lots were developed into five acre lots. He stated that if the applicant could develop by right, that was one thing. However, the applicant was requesting a variance.

Mr. Charles D. Frick of 11506 Chapel View Road spoke in opposition to the request. He stated that his property adjoined Mr. Gainer's property. He reiterated the statement of Mr. Pizzurro and informed the Board that there was unanimous opposition to the requested subdivision. He informed the Board that he was a builder as was Mr. Gainer. He stated that he was the partial owner of another parcel of land at 11500 Chapel View Road. Mr. Frick stated that he had two lots with frontage on Chapel Road of approximately 700 ft. Mr. Frick stated that if the zoning was not adhered to, he would be able to obtain variances on his property and construct six more houses and move. Mr. Frick advised the BZA that he had been unable to attend the previous hearing and had sent in his letter of opposition which outlined his reasons for the denial of the variance. Mr. Frick stated that the applicants had indicated that the back portion of their property served no useful purpose. He argued that it served the same purpose as all of the other vacant undeveloped land of the property owners of Chapel View. Mr. Frick stated that the Gainers were the last ones to purchase into the subdivision and were aware of how the property was developed at that time.

The next speaker in opposition was Dean Gordon Wilson who owned lot 5 adjacent to Mr. Gainer's property. He stated that he had been present at the hearing in July. Mr. Wilson stated that he was registed engineer and was qualified to discuss highway safety. In his opinion, Chapel Road was a very dangerous place to turn onto as it presently existed. He stated that to add another access on it would only complicate the problem. Mr. Wilson stated that all of the property owners in the immediate area were opposed to the access.

The next speaker in opposition was James E. Robbins of 6400 Chapel View Road. He stated that the only comment he wanted to make was on safety of entrances onto Chapel Road. He asked the Board to check the traffic record off of Chapel View. He stated that people living on Chapel View had had their cars totalled pulling out from Chapel View by cars not paying attention to the speed limits. Mr. Robbins stated that the road was not safe and he was concerned a about another road being added to it.

During rebuttal, Mr. Paciulli stated that the opposition was concerned about safety with respect to the new entrance. Mr. Paciulli stated that the VDH&T had indicated that the proposed entrance was safe. Mr. Paciulli informed the Board that there were not any covenants or restrictions with respect to the resubdivision of the property. Mr. Paciulli advised the Board that there were signatures on the petition in support of the variance who resided along Chapel Road. Mr. Paciulli stated that a precedent had been established for the area with the granting of the DeWolf variance for one additional lot. In addition, the

125

area was zoned one acre and was master planned for two to five dwellings per acre. Mr. Paciulli stated that the resubdivision fit the character of the area.

Chairman Smith inquired as to the hardship for the justification for granting the variance. He stated that the applicant had reasonable use of the property. He stated that there was a private road and the property had been developed with a private road which did not come under subdivision control. He stated that a lot of advantages had been allowed which were not normally allowed with a subdivision under subdivision control. Mr. Paciulli stated that any of the people could subdivide their property. Chairman Smith responded that the applicant's property did not front on a public road. He stated that the applicant was aware of that when he purchased the property. Mr. Paciulli stated that he would have to refer back to past BZA cases where that had been adequate justification for the granting of a variance.

Page 125, September 29, 1981 Board of Zoning Appeals
RECONSIDERATION: LEILA J. & ROBERT M. GAINER
R E S O L U T I O N

In Reconsideration of Application No. V-81-C-046 by LEILA J. & ROBERT M. GAINER under Section 18-401 of the Zoning Ordinance to allow subdivision into two lots, one of which would have a width of 12.15 ft. & the other a width of 25.97 ft. (150 ft. min. lot width req. by Sect. 3-106), on property located at 6419 Chapel View Rd., tax map reference 76-4((5))3, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 5 acres.

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

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

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

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Hyland).

Page 125, September 29, 1981, Scheduled case of

8:15 P.M. ELEMENTARY MONTESSORI SCHOOL OF OAKTON, INC., appl. under Sect. 3-103 of the Ord. to permit private school of general education, located 2709 Hunter Mill Rd., 37-4((1))23, Centreville Dist., R-1, 11.121 ac., S-81-C-054.

Mr. John Harris of Patton, Harris, Rust & Associates represented the applicant. He informed the Board that the use would be located on Hunter Mill Road in Oakton in a church situated in an R-1 District. The property had direct access to Hunter Mill Road. There was an existing drop-off zone in front of the building complex. Mr. Harris informed the Board that the staff report contained a copy of a letter from the Health Department indicating they had no problems or objections to the use. In response to questions from the Board, Mr. Harris stated that there were 104 parking spaces existing at hte present time. There were an additional four spaces in the drop off zone.

There was no one else to speak in support and no one to speak in opposition.

Page 125, September 29, 1981 Board of Zoning Appeals
ELEMENTARY MONTESSORI SCHOOL OF OAKTON, INC.
R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-C-054 by ELEMENTARY MONTESSORI SCHOOL OF OAKTON, INC., under Section 3-103 of the Fairfax County Zoning Ordinance to permit private school of general

126

education, located at 2709 Hunter Mill Road, tax map reference 37-4((1))23, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 29, 1981; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-1.
3. That the area of the lot is 11.121 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance; and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, chan in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. A copy of this Special Permit and 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 60, ages 6 through 12 years.
8. The hours of operation shall be 8:30 A.M. to 4:00 P.M., Monday through Friday.
9. The number of parking spaces shall be 104 as shown on the plat.
10. This special permit is granted for a period of three years with the Zoning Administrator empowered to grnat three one-year extensions upon written request at least thirty (30) days prior to the expiration date.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 126, September 29, 1981, Scheduled case of

8:30 P.M. A CHILD'S PLACE and/or MILDRED W. FRAZER, appl. under Sect. 3-103 of the Ord. to permit child care center for 125 children, located 3100 Prosperity Ave., Accotink Run Subd., 49-3((1))19, Providence Dist., R-1, 2.79676 ac., S-81-P-055.

Mr. James Tate, an attorney in Vienna, represented the applicant. Ms. Mildred Frazer of 4953 Sunset Lane in Annandale informed the Board that she was the contract purchaser of the property. The property would be used for a child care center for children from the ages of 2 to 5 years, basically, and up to 12 years of age. The center would be operated five days a week from 7 A.M. to 6 P.M.

Mr. Hyland noted that the old special permit granted for the property only had 20 parking spaces required and he inquired as to the actual number of parking spaces provided. Ms. Frazer stated that there were 16 parking spaces with additional room being available if more were needed. She stated that she would have a maximum of 13 employees. Chairman Smith inquired as to the number of children and was informed there would be 125 children. After examining the Health Department Report, Chairman Smith inquired if the school would have

127

food catered. Ms. Frazer responded that the food would be catered. Chairman Smith stated that there would have to be additional parking to accommodate the 125 children. Mrs. Day inquired if the school buses would be marked like those in Fairfax County. Ms. Frazer stated that at this point, she did not plan to have any buses. Chairman Smith inquired if the applicant planned to upgrade the water supply. Ms. Frazer stated that the property currently had a well which would have to be upgraded. Chairman Smith inquired if the entire 125 children would be transported by their parents as he was concerned about the parking. Chairman Smith stated that he could only remember 6 or 7 parking spaces being available. Ms. Frazer stated that there were 16 parking spaces. She stated that the property was up on a hill which made it very private.

Mr. Darren Flitrough spoke in support of the application. He represented the Pine Ridge Civic Association along Prosperity Avenue which was contiguous to the subject property. He advised the BZA that the Executive Committee of the association had not received any reports of opposition from any of its members.

The next speaker in support was Mr. Juarez, President of the Pine Ridge Civic Association. He added his endorsement to what Mr. Flitrough had stated. He advised the BZA that the Critglers had been very considerate and very sensitive to the character of the area. Mr. Juarez advised the Board that because of the location of the property, this use was probably the best that the citizens could do with the property.

Mrs. Critgler also spoke in support of the application. She informed the Board that she and her husband had enjoyed the past 19 years association with the Pine Ridge people and the County. She thanked the past and present officers of the association. Mrs. Critgler informed the Board that she had thoroughly investigated Mrs. Frazer and found her very astute, very disciplined and deeply interested in the running and the safety of her present school. Mrs. Critgler stated that she was very pleased to support Mrs. Frazer in any way she could. Mrs. Critgler informed the Board that she and her husband had better financial offers for the property but had chosen Mrs. Frazer as they felt very deeply concerned for the community. Chairman Smith inquired if Mrs. Critgler had been at this location for 19 years and was informed she had. He stated that he could not believe it had been that long as he had made the original motion to grant the school. Mrs. Crigler stated that they had 450 graduates and many Ph.D. Chairman Smith stated that the Critglers had done an excellent job.

Chairman Smith stated that if Mrs. Frazer transported any children to the site, he hoped that she would paint the school buses. Mr. Yaremchuk stated that there were not any buses with this application. Mrs. Frazer reminded the Chairman of his promise at the last hearing not to mention the subject of painted school buses again. Chairman Smith stated that he had promised not to speak about it with the other application but not the current one.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-P-055 by A CHILD'S PLACE and/or MILDRED W. FRAZER, under Section 3-103 of the Fairfax County Zoning Ordinance to permit child care center for 125 children located at 3100 Prosperty Avenue, tax map reference 49-3((1))19, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 29, 1981; and

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

1. That the applicant is the contract purchaser.
2. That the present zoning is R-1.
3. That the area of the lot is 2.79676 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

128

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 125 with 13 staff employees.
8. The hours of operation shall be 7:00 A.M. to 6:00 P.M., five days a week.
9. The number of parking spaces shall be 16.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 128, September 29, 1981, Scheduled case of

8:45 P.M. BURKE UNITED METHODIST CHURCH, appl. under Sect. 6-303 of the Ord. to permit child care center for 36 children, two days per week, located 6200 Burke Centre Parkway, Butke Centre, 78-3((17))A2, Springfield Dist., PRC, 3.857 ac., S-81-S-057.

Mrs. Janice Carter informed the BZA that she was proposing to operate a Mother's Day Out Program for children to have free time and organized activities for two days a week from 6 months of age to 5 years. The hours of operation would be 10 A.M. to 2 P.M. There would be 36 children for each day for a total of 72 children. In response to questions from the Board, Mrs. Carter stated that the operation would be on Tuesdays and Thursdays. She stated that there were 40 parking spaces. Mrs. Carter stated that the church was organizing the school.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Ms. Day made the following motion:

WHEREAS, Application No. S-81-S-057 by BURKE UNITED METHODIST CHURCH under Section 6-303 of the Fairfax County Zoning Ordinance to permit child care center for 36 children, two days a week, located at 6200 Burke Centre Parkway, tax map reference 78-3((17))A2, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 29, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is PRC.
3. That the area of the lot is 3.857 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

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

R E S O L U T I O N

129

2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director or Environmental Management.
7. The number of students shall be 36, ages 6 months through 5 five years.
8. The hours of operation shall be 9:45 A.M. to 2:15 P.M. on Tuesdays and Thursdays.
9. The number of parking spaces shall be 40.
10. The staff shall consist of 8 employees.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 129, September 29, 1981, Scheduled case of

9:00 P.M. PETE'S GYMNASTIC CENTER, INC., appl. under Sect. 5-603 of the Ord. to permit health club within an industrial park, located 6700 Industrial Rd., Shirley Industrial Park, 80-2((7))F, Annandale Dist., I-6, 4.515 ac., S-81-A-059.

Mr. Jack Palmer of 4701 Randolph Court in Annandale represented the applicant. He stated that he was familiar with the property. The applicant was requesting approval for a physical fitness and isometrics center. The location of the gym was 6700 Industrial Road in Springfield. The Director and owner would be Pete Novgord, a graduate of Madison College in Harrisonburg. He majored in physical science. Mr. Palmer advised the Board that he had known the applicant for five years and Mr. Novgord was an excellent person who worked well with young people. Mr. Palmer stated that there were two to three softball fields across the street from the facility and there was a tennis club in the area also. In response to questions from the Board, Mr. Palmer stated that the hours of operation would be from 1:00 P.M. to 9:00 P.M. In summertime, the gum would have morning hours. Mr. Palmer advised the Board that he preferred to leave the hours to Mr. Novgord's discretion. However, he stated that there would not be any activities after 9:30 P.M. Chairman Smith suggested hours of 9:00 A.M. to 9:30 P.M. Mr. Yaremchuk stated that he would not put any hours on it as it was in an industrial area. He stated that it didn't matter if they operated 24 hours a day.

Mr. Palmer advised that this was not a usual application. He stated that this type of gym required unusual space and a high ceiling. He indicated that in a new business, it was hard to find that space. Mr. Palmer stated that the facility needed high ceilings than the normal gym facility. Most of the ages of the clients were from 6 to 16. Mr. Palmer stated that he had a 12 year old sone who won the championship in the State of Virginia. Mrs. Day inquired if there should be a time limit on the use because of the ages of the students. Mr. Palmer responded that most of the children were picked up by their parents. He further advised that Mr. Novgord would stop the facility at 9 o'clock.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-A-059 by PETE'S GYMNASTIC CENTER under Section 5-603 of the Fairfax County Zoning Ordinance to permit health club located at 6700 Industrial Rd., tax map reference 80-2((7))F, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 29, 1981, and

R E S O L U T I O N

130

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

1. That the applicant is the lessee.
2. That the present zoning is I-6.
3. That the area of the lot is 4.515 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in I Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and os for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 130, September 29, 1981, Scheduled case of

9:15 P.M. COTTONTAIL SWIM & RACQUET CLUB, appl. under Sect. 3-203 of the Ord. to amend S-29-78 for community recreation facilities to permit addition of roofed pavilion to existing facilities, located 7000 Cottontail Ct., Orange Hunt Subd., 88-2((12))H, Springfield Dist., R-2, 118,193 sq. ft., S-81-S-060.

Mr. Bob Hafer of 9218 Rockefeller Lane in Springfield represented the club. He stated that he was President of the Board of Directors. He informed the Board that the club had been in existence for the past three years. Earlier in the spring, the club had constructed a concrete slab, 45'x40'. Now, the club wanted to add a roofed pavilion over half of the slab. The pavilion would be 45' x 22' and would be 8 ft. off of the ground with a maximum of 12 ft. off of the ground. The purpose of the pavilion was to provide shade and coverage for picnic and shelter during swim meets and to allow people to get out of the sun during the day.

In response to questions from the Board, Mr. Hafer stated that the materials would consist of block. He stated that the pavilion would be all wood with a shingled roof similar to the bathhouse.

There was no one to speak in support or in opposition to the application.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-S-060 by COTTONTAIL SWIM & RACQUET CLUB, under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-29-78 for community recreation facilities to permit addition of roofed pavilion to existing facilities, located at 7000 Cottontail Ct., tax map reference 88-2((12))H, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

RESOLUTION

131

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on September 29, 1981; and

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

1. That the owner of the subject property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 118,193 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance; and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procederal requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit is subject to all provisions of S-29-78 not altered by this resolution.

Ms. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 131, September 29, 1981, After Agenda Items

Elsie Leigh, V-6-78: The Board was in receipt of a letter from Ms. Elsie Leigh requesting an extension of the variance granted by the BZA on April 4, 1978. Four previous extensions had already been granted: 1st extention for 180 days; 2nd extension for one year; and 3rd and 4th extensions were granted for six months. It was the consensus of the Board to grant another six month extension.

//

Page 131, September 29, 1981, After Agenda Items

Church of the Good Shepherd, S-81-A-025: The Board was in receipt of a revised plat submitted by Susan Price of the Church of the Good Shepherd containing minor engineering changes. The changes involved a storm water management system, new parking to the north and three new 175 watt mercury lights with 10 ft. high poles. It was the consensus of the Board to allow these changes as minor engineering changes.

//

Page 131, September 29, 1981, After Agenda Items

Mansion House Yacht Club: The Board was in receipt of a plat for the Mansion House Yacht Club along with its resolution concerning the parking spaces. The Clerk was directed to talk to the Zoning Inspector as to how to compute the parking area to determine if the required number of parking spaces were present.

//

Page 132, September 29, 1981, After Agenda Items

Salary Survey: The Board of Zoning Appeals was presented with the results of the Salary Survey that they had directed the Clerk to perform.

//

Page 132, September 29, 1981, After Agenda Items

Agenda for Joint Meeting between BZA and Board of Supervisors: The Clerk presented the final agenda for the BZA meeting scheduled for October 5, 1981 with the Board of Supervisors.

//

Page 132, September 29, 1981, After Agenda Items

Olam Tikvah: The Board of Zoning Appeals was in receipt of a letter complaining about the overflow parking into the subdivision streets from the synagogue use. Chairman Smith stated that it was illegal to park off the site and he requested the Clerk to notify Claude Kennedy of Zoning Enforcement to check out the complaint.

// There being no further business, the Board adjourned at 10:20 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

APPROVED: June 2, 1983
Date

Submitted to the Board on May 25, 1983

133

A Special Meeting of the Board of Zoning Appeals and the Board of Supervisors was held on Monday, October 5, 1981, at the Fairfax City Holiday Inn, Banquet Room No. 1. The following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

A joint breakfast meeting between the Board of Zoning Appeals and the Board of Supervisors was conducted at 8:00 A.M. The following agenda was discussed.

Discussion Items

1. Better communication between BZA, Board of Supervisors, County Attorney's Office and the Zoning Administrator's Office.

2. A more comprehensive and thorough review, analysis and report from the staff on the applications that come before the BZA to include a review and determination from the County Attorney's Office prior to the scheduled hearing as to whether applications are properly before the BZA.

3. Salary increase for Board members to be comparable to other area jurisdictions.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the BZA on June 3, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: June 14, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, October 6, 1981. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk and Ann Day. (Gerald Hyland was absent due to military reserve duty).

The Chairman called the meeting to order at 10:30 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. PAUL M. & SHARON R. LINK, apppl. under Sect. 18-406 of the Ord. to allow deck to remain 15 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 12398 Ox Hill Rd., Fair Oaks Subd., 45-2((6))279, Centreville Dist., R-3, 11,331 sq. ft., V-81-C-117. (Deferred from July 30, 1981 for Notices).

Mr. Chip Paciulli of Paciulli, Simmons & Associated located 307 Maple Avenue, West in Vienna represented the applicant. He informed the Board that the lot was very shallow with the depth being 92 ft. The normal depth for the subdivision was about 110 to 120 ft. He stated that the normal depth would have allowed a deck for this type of house. Chairman Smith advised Mr. Paciulli that the application was filed under the mistake section. He inquired as to why the deck was placed on the property. Mr. Paciulli advised the Board that the builder had constructed the deck in violation of the Ordinance. However, he stated that the builder did not realize the deck was in violation. In response to questions from the Board, Mr. Paciulli stated that the builer was Batal Builders. Mr. Paciulli advised the Board that his engineering firm had staked out the house correctly. The deck had not been shown on the house location survey. Mr. Yaremchuk inquired as to the amount of time the builder had been in Fairfax County and was informed several years. Mr. Yaremchuk inquired as to the how the mistake happened. Mr. Paciulli stated that the house was constructed and almost finished. The contract buyers wanted a deck on the back of the house. He stated that in the present times, the builder worked more with the potential buyers.

Chairman Smith inquired if there had been a building permit for the deck. Mr. Paciulli stated that a building permit was not obtained for the deck originally. When the builder applied for the permit, it went through all the process until it was stopped in zoning. Mr. Paciulli explained that the builder had assumed that the deck was part of the house and did not require a building permit since the house had one. Chairman Smith stated that it would be nice to have the builder present to answer questions. Mr. Paciulli advised the Board that a representative of the builder was present. Mrs. Day inquired as to why the deck could not be slid to the right. Mr. Paciulli informed her that then the deck would be even closer to the line. He stated that the house ran parallel with the line and the deck would still have required a variance. Mrs. Day inquired as to what was located on the lot behind the one in question. Mr. Paciulli stated that there was another house. He stated that he had a petition from those property owners indicating that they did not have a problem with the deck. Mrs. Day inquired if the deck was anchored and was informed it was.

Mr. DiGiulian inquired if the Links were the present owners. He was informed that they were. Mr. Paciulli stated that the builder had made the original variance application. Chairman Smith inquired if the deficiency was noted at the time of settlement. Mr. Paciulli stated that there had been a reason for having the house set the way it was located. Chairman Smith stated that there might have been a reason for it. However, he stated that the application was filed under the mistake section of the Ordinance and not the hardship section. He stated that the Board wanted to know if the mistake was any fault of the builder.

Mr. Yaremchuk stated that it appeared that it was the fault of the builder as he had not checked with the zoning office and did not get a building permit prior to construction. He stated that the builder was not interested in complying with the requirements of Fairfax County. Chairman Smith stated that if the builder had obtained a building permit, he would have met the requirements of the Ordinance. Mr. DiGiulian stated that the builder would have at least fulfilled his obligations by obtaining the permit. Mr. Paciulli submitted a petition from all the neighbors in support of the variance application.

There was no one to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-C-117 by PAUL M. & SHARON R. LINK under Section 18-401 of the Zoning Ordinance to allow deck to remain 15 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), on property located at 12398 Ox Road, tax map reference 45-2((6))279, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

RESOLUTION

135

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 11,331 sq. ft.

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

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

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

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 135, October 6, 1981, Scheduled case of

10:15 A.M. FRANK D. BARLOW, III, appl. under Sect. 18-406 of the Ord. to allow a house with attached garage to remain 19.3 ft. from side and 21.5 ft. from rear lot line (20 ft. min. side & 25 ft. min. rear yard req. by Sect. 3-107) and to allow deck to remain 12.3 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 2852 Cedarest Rd., Melville Subd., 49-3((2))12, Providence Dist., R-1, 16,018 sq. ft., V-81-P-127. (DEFERRED FROM AUGUST 4, 1981 FOR NOTICES.)

As no one answered the call, the Chairman passed over the variance until the end of the agenda.

//

Page 135, October 6, 1981, Scheduled case of

10:30 A.M. DOROTHEA ERNST BLOCHER, appl. under Sect. 18-401 of the Ord. to allow subd. into two lots such that an existing 22.33 ft. high bldg. would have a 10 ft. side yard & a 10 ft. rear yard (22.33 ft. min. side & rear yards req. by Sect. 5-307), located 8020 Lee Highway, 49-2((1))80, Providence Dist., I-3, 1.4680 ac., V-81-P-126. (SPECIAL EXCEPTION SE-81-P-065 PENDING BEFORE BOARD OF SUPERVISORS ON OCTOBER 5, 1981.)

Chairman Smith informed the Board that the Special Exception was acted on by the Board of Supervisors on October 5, 1981. The Board of Supervisors had allowed development with a condition set forth that the road be developed absent a variance from the I-3 district requirements. Accordingly, Chairman Smith stated that the requested variance was no longer needed as the Board of Supervisors had satisfied the conditions in the Special Exception resolution.

Mr. DiGiulian moved that the Board allow the withdrawal of the variance application. Mrs. Day seconded the motion. The motion passed by a vote of 3 to 0 (Mr. Hyland being absent and Mr. Yaremchuk being out of the room).

//

Page 135, October 6, 1981, Scheduled case of

10:40 A.M. BERNIS & PETER VON ZUR MUEHLEN, appl. under Sect. 18-406 of the Ord. to allow deck to remain 13.8 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 3096 Cobb Hill La., Oakton Vale Subd., 36-3((11))41, Centreville Dist., R-1(C), 28,911 sq. ft., V-81-C-160.

There was a question on notices as the Fairfax County Park Authority had not been notified in accordance with the regulations. However, the applicant had a letter from the Asst. Superintendent of Land Acquisition from the Park Authority indicating that they waived their right of notice. Accordingly, Mr. DiGiulian moved that the Board accept the letter and that the notices be in order. Mr. Yaremchuk seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith).

Mr. Bernis Von Zur Muehlen informed the Board that the existing house on the property was built 8 ft. above ground. He stated that during the summer, he had contacted an individual to build his deck and had obtained several bids. Mr. Muehlen informed the Board that he thought the individual had taken all of the legal steps necessary for the construction of the deck. Mr. Muehlen informed the Board that when the individual finally got around to

136

obtaining a permit, he had to secure it through another person as he did not have a license. Mr. Muehlen stated that his builder was able to secure the permit through the other person and the deck was approved except for the setback.

Chairman Smith inquired if the individual had informed Mr. Muehlen that he had a home improvement license. Mr. Muehlen stated that he had submitted a copy of the contract to the BZA for review. Mr. Muehlen stated that because the deck was contructed on raised ground, he wanted to make sure that the County approved the footings because of a safety factor.

Mr. DiGiulian inquired if Mr. Muehlen had stopped all work on the deck once he found out the man did not have a permit. Mr. Muehlen assured Mr. DiGiulian that was correct. Chairman Smtih stated that the deck could have been constructed further down on the property and not needed a variance. Mrs. Day asked to see photographs of the deck. Chairman Smith inquired if the contractor had been paid in full. Mr. Muehlen stated that he had paid in full except for the foundation and support of the deck. Mr. Yaremchuk noted that the property backed up to the Fairfax County Park Authority. He stated that no one would see the deck. Mr. Muehlen stated that the deck improved the looks of the house. Mrs. Day inquired if the contractor objected to the withholding of the money and was informed he did not.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mr. DiGiulian made the following motion

WHEREAS, Application No. V-81-C-160 by BERNIS & PETER VON ZUR MUEHLEN under Section 18-406 of the Fairfax County Zoning Ordinance to allow deck to remain 13.8 ft. from rear lot line (19 ft. min. rear yard required by Sects. 3-107 & 2-412) on property located at 3096 Cobb Hill Lane, tax map reference 36-3((11))41, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board of Zoning Appeals on October 6, 1981; and

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

THAT non-compliance was no fault of the applicant.

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

THAT the granting of this variance 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 upon the owner.

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

This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Ms. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 136, October 6, 1981, Scheduled case of

10:50 A.M. DANIEL & JANE ROGERS, appl. under Sect. 18-401 of the Ord. to allow construction of an attached garage 23 ft. from the front lot line (35 ft. min. front yard req. by Sect. 3-207), located 6508 Pinecrest Ct., Pinecrest Subd., 72-1((6))240, Mason Dist., R-2, 23,947 sq. ft., V-81-M-161.

Mr. Robert Weinstein of F Street in Washington, D.C. represented the applicants. He stated that he was a architect. Mr. Weinstein stated that the Rogers were seeking a variance in the front yard in order to build a two car garage and a studio. Mr. Winstein advised the Board that the 35 ft. setback created an unnecessary hardship for the applicants. He showed the Board a plat indicating how the required setback reduced the available area by one-half. Mr. Weinstein informed the Board that they were respecting the side yard setbacks. He stated that they were proposing to put a very small projection into a very large setback area. He stated that the enclosed garage was necessary as Mrs. Rogers had a hypersensitivity to cold. Mr. Weinsten stated that it was not possible to construct the garage on the end of the house as that was the master bedroom area. He stated that the variance would not create an inconvenience for the neighbors.

137

In response to questions from the Board, Mr. Weinstein stated that the Rogers had owned their property since 1979. Chairman Smith inquired as to what the construction in the front yard would consist of. Mr. Weinstein stated that it would be a garage plus a studio. He stated that the garage was the only portion that would project into the setback area. The studio space was above the garage. He informed the Board that the project was a two story addition. Chairman Smith stated that it was true that the applicants had a pie-shaped lot but they were adding considerable construction on the lot. Chairman Smith stated that there was already a garage at the present time. Mr. Weinstein responded that the present garage was a single one which was inaccessible. The applicants proposed to construct a two car garage at the same location. Mr. Weinstein informed the Board that the present garage was being used as a shop area.

There was no one else to speak in support of the application. The following persons spoke in opposition. Mr. Richard Zaparano of 6504 Pinecrest Court informed the BZA that he lived to the east of the applicant. He stated that he was speaking for the six other homeowners. He asked the BZA for clarification of the plat. Mr. Zaparano informed the Board that all of the homes in the neighborhood were custom homes. He stated that the requested variance was excessive and unreasonable. He urged strict enforcement of the setback requirements. The granting of the variance woudl detract from the area. He disagreed that there were not any other alternatives for the Rogers. Mr. Zaparano stated that the present garage had been used very adequately by the previous property owner. Mr. Zaparano stated that the proposed addition would contain 2,600 sq. ft. of floor space which would not be in harmony with the land, terrain or existing structure. Mr. Zaparano stated that the proposed addition would change the character of the other homes. In addition, he stated that the property values would be affected for all of the people in the Pinecrest Court. Mr. Zaparano stated that the addition would be adding on a look to the present structure which would not blend. He informed the Board that the applicants had only resided in the area for two years. He stated that the applicants had several vehicles consisting of two Lincolns; two pickup trucks and a small sports car. In addition, they had a motor home and a motor cycle and a cabin cruiser mounted to a trailer. Mr. Zaparano stated that none of the vehicles had ever been housed in the present garage. He stated that at least two of the cars could have occupied the space. Mr. Zaparano stated that the overflow of vehicles extended into the street which added to the congestion and hampered the cars going in and out of the court. In addition, it obscured vision of the children in the area. Mr. Zaparano stated that the cul-de-sac was used by the children every day. He stated that the citizens were deeply concerned about them. Mr. Zaparano stated that the citizens were also concerned about the unusual amount of large parcels which arrived on the subject property and did not leave the property. He stated that they were concerned that the proposed addition would have be for something other than a residential use. Mr. Zaparano was concerned about the type of materials to be used in the construction of the addition as the written statement did not indicate the type of materials. In response to questions from the Board, Mr. Zaparano stated that there were not any other garages in the area which extended into the setback area. He stated that this would be the first if it was approved.

The next speaker in opposition was Mr. Harry Day of 6500 Pinecrest Court. He stated that Mr. Zaparano had covered all of the points. He stated that the basic justification for the granting of any variance was not present in this case. He informed the Board that the location of the house and the shape of the lot were not any different from any other lot on the street. He stated that all of the lots had unusual shapes. Anyone wanting to build a substantial addition would face the same difficulty and would have to look to other alternatives. He stated that the present garage had been adequate for the past two winters.

The next speaker in opposition was Mrs. Geraldine Newman who resided at 6509 Pinecrest Court across the street from the Rogers. She stated that having a two story garage would deface the neighborhodd. Mrs. Newman informed the Board that the property owners in the area had always been very careful not to ask for waivers of the setback rules. Mrs. Day stated that the Rogers had many vehicles which they parked in the cul-de-sace making it difficult for her to get in and out of her driveway. Mrs. Day stated that she feared the granting of the variance would establish a precedent for the neighborhood and cause the property values to go down for the entire block.

During rebuttal, Mr. Weinstein informed the Board that the Rogers' property was the only lot on the block that the long dimensional pie-shape that affected the setbacks. Mr. Weinstein stated that one of the problems of the Rogers were the many vehicles parked in the cul-de-sac which caused a problem for the neighbors. Mr. Weinstein stated that the construction of the two car garage would help to get the vehicles off of the street and into an enclosed space. Mr. Weinstein stated that as far as visual aspects, it was their intent to build an addition that would be harmonious with the house. Mr. Weinstein stated that he wanted to set the neighbors' minds to rest about the parcels. He informed the Board that the Rogers had a new store in Georgetown Park and had been receiving stock at their home. Chairman Smith inquired about the type of stock and was informed it was lingerie.

Chairman Smith stated that the applicants enjoyed the reasonable use of their property. He stated that this would not deny them reasonable use if the variance were denied.

RESOLUTION

138

In Application No. V-81-M-161 by DANIEL & JANE ROGERS under Section 18-401 of the Zoning Ordinance to allow construction of an attached garage 23 ft. from the front lot line (35 ft. min. front yard req. by Sect. 3-207) on property located at 6508 Pinecrest Ct., tax map reference 72-1((6))240, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 23,947 sq. ft.

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

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

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

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 138, October 6, 1981, Scheduled case of

11:00 A.M. ALBERT L. & CHARLOTTE C. RAITHEL, JR., appl. under Sect. 18-401 of the Ord. to allow construction of dining room and carport additions to dwelling to 11.4 ft. from rear lot line & 28.6 ft. from a street line of a corner lot (15 ft. min. rear yard & 35 ft. min. front yard req. by Sect. 3-207), located 4200 Kilbourne Dr., 69-2((6)) 233, Annandale Dist., R-2, 15,036 sq. ft., V-81-A-162.

Mr. Albert Raithel informed the Board that he was transferred back to the area in 1978 by the Navy Department. At that time, he was a legal citizen of the State of Florida and wanted to move back to Florida. However, by a virtue of a number of factors such as the quality and type of medical facilities, job opportunities, etc., upon his retirement, he and his wife had decided to settle here in Fairfax County. Mr. Raithel stated that he was happy with his property and would try to take care of his parents up here rather than in Florida. Mr. Raithel stated that he had a rather large driveway without any covering. The driveway sloped down and was rather treacherous in inclement weather. Mr. Raithel stated that he had grandchildren and he wanted a carport which would require extending into the 35 ft. front setback. He stated that the carport would be 28.6 ft. from the front lot line. The second variance dealth with the construction of a dining room. Mr. Raithel stated that he had a growing family with all of the grandchildren and his mother and father-in-law. At the present time, when they were all together, they had to extend 3 to 4 ft. into the living room in order to seat everyone. Mr. Raithel stated that they wanted a variance in order to build an addition to the dining room.

Mr. Yaremchuk inquired as to the hardship on a land use basis. Mr. Raithel responded that he was unable to construct the structure for the safety and quality of the lifestyle he desired and expected. He stated that when he purchased the property, it had been pointed out that there was only a 25 ft. setback. However, upon investigation, he found out that the setback was 35 ft. and 15 ft. Mr. Raithel stated that his house was on an angle which gave him a very beautiful front yard. In response to questions from the Board, Mr. Raithel stated that he had two cars which he presently parked in the same location as the requested carport area. Mrs. Day inquired as to how wide the carport had to be. Mr. Raithel stated the plat showed 21 ft. which included a small back porch coming out from the kitchen. Chairman Smith stated that the carport should only be 20 ft. and he asked why it could not be cut down. Mr. Raithel explained that the porch came out 28 inches. If the carport was only 20 ft., it would not allow much clearance. Chairman Smith explained that the BZA could only consider a minimum variance. Mr. Raithel stated that this was a front setback variance. Chairman Smith stated that it was still a minimum variance for a setback area to accommodate a hardship. Mr. Raithel stated that he did not have any wide cars so he could probably live with a 20 ft. carport. Chairman Smith inquired if there was a metal shed on the property. Mr. Raithel stated that at the back of the driveway was a brick retaining wall which a small shed behind it. He stated that the shed would be removed.

139

Chairman Smith next inquired as to why a 15'x16' dining room would not be adequate. Mr. Raithel explained that the size of his family needed a dining room of 15'x18' for outside dimensions in order to accommodate everyone. He informed the Board that he had already cut it down as much as possible before applying. If it was cut down any more, it would not make sense to build it at all. Chairman Smith stated that a 15'x16' dining room or a 20 ft. carport would appear to accommodate any hardship that Mr. Raithel had.

Mrs. Day stated that she understood the quality of life that Mr. Raithel wanted to maintain but she inquired about the safety issue he had raised in his justification. Mr. Raithel responded that if you walked out on the side of the hill after an ice storm, it was quite slippery because there was not any cover or shelter. He stated that it was just a straight walk out. As a result of the runoff, he stated that he got ice in the area all the time. If a caport was built, it would provide shelter for the area which would prevent that from happening.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-A-162 by ALBERT L. & CHARLOTTE C. RIATHEL, JR. under Section 18-401 of the Zoning Ordinance to allow construction of dining room and carport additions to dwelling to 11.4 ft. from rear lot line & 28.6 ft. from a street line of a corner lot (15 ft. min. rear yard & 35 ft. min. front yard req. by Sect. 3-207) on property located at 4200 Kilbourne Drive, tax map reference 69-2((6))233, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 15,036 sq. ft.
4. That the applicant's property has exceptional topographic problems and has an unusual condition in the location of the existing house on the property and is a corner lot.

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED IN PART (to allow construction of dining room and carport additions to dwelling such that dining room dimensions be 15 ft. x 16 ft. so that the rear setback would be 13.4 ft. and garage dimensions be 20 ft. wide by 21 ft. length so that the front yard setback would be 29.6 ft.) with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion for the purpose of discussion.

The motion failed by a vote of 2 to 2 (Messrs. DiGiulian and Yaremchuk)(Mr. Hyland being absent).

Page 139, October 6, 1981, Continuation of Discussion on the Albert L. & Charlotte C. Raithel, Jr. variance:

Mr. DiGiulian stated that he believed a 20 ft. wide carport was unreasonable. Mrs. Day stated that the applicant was making additions half the size of the existing structure.

Page 140, October 6, 1981, Continuation of Discussion on the Albert L. & Charlotte C. Raithel, Jr. variance:

140

Mr. DiGiulian moved that the Board allow the absent Board member, Mr. Hyland, to review the case and participate in the vote on the application. Mr. Yaremchuk seconded the motion. The motion failed by a vote of 2 to 2 (Mr. Smith & Mrs. Day).

Mr. DiGiulian informed the Chairman that he wanted to withdraw his second to the original motion as it had been for discussion purposed only. Chairman Smith stated that it was too late for that now as a vote had already been taken. However, he advised Mr. DiGiulian that under parlimentary procedures, the Board could offer a resolution to reconsider at the next meeting unless they wanted to do it immediately. Mr. DiGiulian stated that it would not do much good to offer a resolution to reconsider today as it would end up in another 2 to 2 vote which would not accomplish anything.

Chairman Smith informed Mr. Raithel that the Board would give him an opportunity to reconsider but that at this point the requested variance was denied.

//

Page 140, October 6, 1981, Scheduled case of

11:10 A.M. JOHN HANES, JR. & GUNNELLS RUN FARM, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into 15 lots with proposed lots 6, 7, 12 & 13 each having width of 6 ft. and proposed lot 9 having width of 12 ft. (200 ft. min. lot width req. by Sect. 3-E06), located Arnon Chapel Rd., 8-3((1))pt. 20 & 22, Dranesville Dist., R-E, 32.69 ac., V-81-D-163.

Mr. Roland T. DePolo of 7939 Free Hollow Drive in Falls Church represented the applicant. He was advised by the Chairman that there were only four Board members present but he stated that he wished to proceed with the hearing. Mr. DePolo was a civil engineer with the firm of Patton, Harris, Rust & Associates in Fairfax. Mr. DePolo stated that they were requesting a variance of the minimum lot width required under the Ordinance for the R-E zone. He stated that they were not seeking the variance as an attempt to increase the maximum lot yield but to allow the development of the property while at the same time preserving as much of the existing natural vegatation and topography as possible. Mr. DePolo felt that the granting of the variance would allow the development to best fit the existing land conditions and preserve the natural resources while also blending in with the surrounding neighborhood which was the main intent of the County Zoning Ordinance. Mr. DePolo stated that they would provide a community of large, spacious lots which would fit well with the surrounding community and provide the best utilization of the property.

In the staff review, it was requested that the applicant provide a through street connection to Watts Road in the adjacent subdivision. He stated that the additional street connection would further increase the removal of the existing vegetation and require the piping of one of the natural swales on the property while providing minimum additional access for the lot.

Mr. DePolo stated that they had reviewed the matter with the present lot owners in the adjacent subdivision who felt that the additional street connection would be very disruptive to their community and did not wish the connection provided. Mr. DePolo stated that the existing vegetation consisted of a large number of birches and other deciduous trees which they intended to save as much as possible. However, any additional streets such as the extension of Watts Road or the required street to provide frontage for the subdivision should the variance be denied would require the removal of a tremendous number of additional trees.

Mr. DePolo stated that the staff report also made reference to the fact that no cluster subdivisions were allowed in this section of the County. Mr. DePolo stated that the plan was not a cluster subdivision. He stated that the main function of a cluster subdivision was to allow a reduction in the minimum lot size which was not their intent. Instead, they were asking for pipestems to be allowed with all the lots still exceeding the minimum lot size for a two acre conventional subdivision. Mr. DePolo stated that even though the pipestems had been shown as 6 and 12 ft. wide, they would be encompassed by a 25 foot wide ingress/egress as recommended by the County in order to allow for adequate construction of the driveway for the lots in question.

Mrs. Day inquired as to why the plats did not show the extension of Watts Road into the property as required by the staff. Mr. DePolo explained that they had not shown the extension of Watts Road and did not want to address the matter at this time. He stated that they needed more time to take it up with the staff. Chairman Smith inquired as to why the applicant had not shown it on the plat after receiving the comments from Design Review since the BZA had to tie the resolution to the plat before it at the hearing. Mr. DiGiulian stated that the applicant was trying to tell the BZA that he was not completely convinced that he was going to have to connect Watts Road. He was asking that the BZA act on the present plat and allow him to work with the staff on the connection. Mr. DePolo stated that the question at the hearing was not the connection of Watts Road as the variance was for lot width. In the staff review, the extension of Watts Road had been recommended. Mr. DePolo stated that they wanted to submit a preliminary and work with the citizens and the staff to come up with a compromise on the extension of Watts Road. Chairman Smith stated that it should have been worked out before the public hearing as it would be easier for all concerned.

141

The next speaker in support of the application was Mr. John W. Hanes, Jr. of 6000 Innsbruck Avenue in Great Falls. He informed the Board that he was the owner of the entire tract, part of which had been transferred to his daughter's corporation. He asked to be able to put the request into context for the BZA. Mr. Hanes informed the BZA that this subject development represented one corner of his farm. He stated that he had lived on the property for 30 years. His daughter and her husband were presently engaged in constructing their home in Great Falls. Mr. Hanes stated that he proposed to subdivide a portion of his property in a way he felt would be one of the most beautiful tracts in Fairfax County. He stated that the portion of the property before the BZA was close to Arnon Chapel Road and abutted on another development of smaller lot sizes. Mr. Hanes stated that he had engaged the best people in land planning and engineering to design the subdivision. The purpose of the variance request was not to increase the lots produced but to take into account the topography of the area with its ridges intersphered with streams and timber. Mr. Hanes stated that the entire parcel was a wooded lot.

Mr. Hanes asked to make a comment about the Design Review comments. He stated that when the other subdivision was developed 4 years ago, the developers came to him seeking permission to extend Watts Road into a turnaround on his property. Mr. Hanes stated that he did not believe it should be a circular road coming off of Arnon Chapel Road. He asked that the BZA not try to resolve that matter today. He stated that the comments from Design Review only came up recently. The neighbors were opposed to a through connection and the extension would detract from the land use question. Mr. Hanes stated that if they had to connect, they would so but he hoped there was some other solution to be found.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-D-163 by JOHN HANES, JR. & GUNNELLS RUN FARM, INC. under Section 18-401 of the Zoning Ordinance to allow subdivision into 15 lots with proposed lots 6, 7, 12 & 13 each having width of 6 ft. and proposed lot 9 having width of 12 ft. (200 ft. min. lot width req. by Sect. 3-E06) on property located on Arnon Chapel Road, tax map reference 8-3((1))pt. 20 & 22, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 32.69 acres.
4. That the applicant's property has exceptional topographic problems.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

---0---

Page 142, October 6, 1981, Scheduled case of

11:20 A.M. ARTHUR & EVELYN METZGER, appl. under Sect. 18-401 of the Ord. to allow subdivision into 3 lots, with proposed lot 501 having width of 124.62 ft. (150 ft. min. lot width req. by Sect. 3-106), located 1358 Windy Hill Rd., James Magarity Subd., 30-1((9))8B & 30-1((1))7, Dranesville Dist., R-1, 3.123 acres, V-81-D-164.

142

Ms. JoAnna Hirst of 4310 Kenwind Court in Annandale informed the BZA that she represented Dr. Metzger and herself as contract purchaser. She stated that she was seeking a variance in order to build a home for her family and one other on two acres of land which she had contracted from Dr. Metzger. She stated that Dr. Metzger also owned adjacent property. The subject property was located on Windy Hill Lane. She stated that Dr. Metzger would retain his home. Ms. Hirst stated that part of the land was landlocked and did not have frontage on a public street. She could only build one house with the easement. Ms. Hirst stated that she had talked to Dr. Metzger and his engineer as she wanted to reduce his frontage for lot 7 in order to carve out two driveways. The two new driveways would coincide with the driveway of the Goss property. Ms. Hirst explained that she had shown the plan to Mr. Oscar Hendrickson of Design Review and had talked to Supervisor Falck. Their only concerns were that she abide by the master plan and zoning requirements. She stated that another neighbor did not want any additional driveways into Windy Hill Lane so she proposed to widen the existing driveway only.

Chairman Smith inquired if there were three variances to be considered in this application. instead of two. Mr. Covington stated that it was explained in the staff report. Chairman Smith noted that only one lot had been advertised for variance purposes. He stated that at this point, the only thing the BZA could do was defer the application to allow for the readvertising, reposting and renotification of the property.

It was the consensus of the Board to defer the application until November 3, 1981 at 12:20 P.M. Chairman Smith stated that the readvertising, reposting and renotification would be performed by the County staff.

//

Page 142, October 6, 1981, Scheduled case of

11:30 A.M. R. W. CLEMENT, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into 3 lots with proposed lot 3 having width of 12 ft. (150 ft. min. lot width req. by Sect. 3-106), located 11406 Chapel Rd., Chapel Brook Subd., 76-4((2))2A, Springfield Dist., R-1, 7.0 ac., V-81-S-165.

Mr. Chip Paciulli of Paciulli, Simmons & Associates located at 307 Maple Avenue in Vienna represented the applicant. He informed the Board that the property contained 7 acres and wa was zoned R-1. Mr. Paciulli stated that they had tried to conform with all applicable regulations in the layout of the subdivision but wished to have a variance as it was a more superior layout. He stated that they could subdivide the property into three lots by right but the variance was better. The variance would still allow the same number of lots and still use the same number of perc fields but would make the lots more squarer.

Chairman Smith stated that if it was possible to subdivide the property into three lots without a variance, then that was what the applicant should do. Chairman Smith stated that a variance was not just for convenience but for hardship. Mrs. Day inquired as to where else to put the road. Mr. DiGiulian stated that the layout of the subdivision without the variance ended up with wierd shaped lots. Mr. Yaremchuk stated that the variance plan allowed for much bigger lots. Mrs. Day inquired about the septic fields for lots 1 & 2. She asked what was the best location, health wise, or the best subdivision plan. Chairman Smith stated that the whole area perced pretty well. He stated that the applicant could develop into two lots which was reasonable. Mr. DiGiulian noted that this property was next to the application heard by the BZA the previous week. Mr. Paciulli stated that the proposed lots were in conformance with what was being developed in the area.

There was no one else to speak in support. The following persons spoke in opposition. Mr. Vince Pizzurro of 11401 Chapel Road stated that he lived on five acres and owned an additional 4 acres and had a partnership on lot 7. The zoning was a minimum of two acres. Mr. Pizzurro informed the BZA that this was the second request from Mr. Paciulli, both requests being extreme. He stated that Mr. Clement was well aware of the County Codes and stated that the 150 ft. lot width was not a new requirement. He stated that Mr. Clement had a total of 300 ft. frontage in Chapel Brook but was short for the 3rd dwelling. Mr. Pizzurro stated that the area was developed with a rural road condition. The road was not designed or built to handle high density. Mr. Pizzurro stated that the County Code was very reasonable. Mr. Pizzurro stated that if there was an undue hardship, the surrounding property owners could understand the request. However, there was no hardship. The surrounding lots were five acres without any other variances. He stated that there was not any more hardship in this subdivision than in other subdivision and no variances had been granted in the other subdivisions.

143

The next speaker was Mr. Charles Brick of 11506 Chapel Road who informed the Board that he had not heard the testimony about the alternatives. Chairman Smith explained that Mr. Paciulli had stated that he could develop the property into three lots by right without a variance. Mr. Brick stated that he was not sure that he was certain as to what the alternatives were. Mr. Brick stated that his objections were the same as for any other request up and down Chapel Road.

Mr. Paciulli informed the Board that he did have approval for the three lots. The variance would not increase the yield, it would just produce a better product for future homeowners. Mr. Yaremchuk inquired if the plan was approved by DEM. Mr. DiGiulian stated that the Ordinance spoke about reasonable use. The approved plan did not have reasonably shaped lots. Mr. Yaremchuk stated that DEM had probably suggested that the applicant go to the BZA for a variance to create a better looking lot. Chairman Smith stated that if there were alternatives, then the BZA had not authority to grant a variance. Mrs. Day stated that she would prefer to have Mr. Hyland present for the vote on the application. She stated that her concern was that the variance plat was a better use of the land for the future. She preferred to wait Mr. Hyland take more time to study the plat presented. Chairman Smith stated that he wanted the applicant to supply the BZA with a copy of the approved preliminary plan within the next five days to be made available to Mr. Hyland.

The variance was deferred until November 3, 1981 at 12:30 P.M. for decision.

Page 143, October 6, 1981, Recess

At 12:35 P.M., the Board recessed for lunch and reconvened the meeting at 1:30 P.M. to continue with the scheduled agenda.

//

Page 143, October 6, 1981, Scheduled case of

11:40 A.M. WESLEY W. & ANN M. SAUNDERS, appl. under Sect. 18-401 of the Ord. to allow construction of swimming pool and spa 25 ft. from front lot line (such accessory structure or use req. not to be located in any front yard by Sect. 10-105), located 6835 Winter La., Hillbrook Forest Subd., 71-2((14))15, Annandale Dist., R-2, 20,748 sq. ft., V-81-A-166.

Mr. Wesley W. Saunders informed the Board that he lacked 10 ft. of space in order to put a swimming pool in his front yard. He stated that his property was a corner lot and as a result had minimal amount of land. He informed the Board that on the east side of his house was a carport. Mr. Rosenthal of Anthony Pools in Rockville, Md. informed the BZA that the spa was a health spa with four jets on it. Originally, he had looked at the left side of the house to place the spa but it would cause a dam. So they planned to put the pool on the right-hand side of the house and plant shrubbery and construct a fence to hide the pool. Chairman Smith stated that the pool could be installed on the carport side without a variance. Mr. Rosenthal replied that the existing trees would have to be removed and the retaining wall would cause a problem with drainage. Mrs. Day inquired if there were other pools in the area. Mr. Rosenthal stated there were but he did not have the addresses of the properties. Mrs. Day asked if the pools were in the front yards and Mr. Rosenthal stated that they were in the side yards and did not extend beyond the front of the house. He stated that this was a special exception because of the corner lot situation.

Chairman Smith stated that the Board was in receipt of letter signed by eight homeowners. He stated that he had not heard any justification for the pool. Chairman Smith stated that the pool could be constructed on the opposite side without a variance.

During rebuttal, Mr. Saunders informed the Board that it was beyond his means to afford a pool on the easterly side of the house simply because of the amount of work that it would take to remove the existing trees. He informed the Board that he had arthritis and the pool would help it. Mr. Yaremchuk inquired as to the hardship on a land use basis. Mr. Yaremchuk stated that it appeared that the pool could be constructed next to the stoop. Mr. Saunders stated that he had a concrete patio which was 15 ft. wide at that location. He stated that the pool would have the usual dimensions of a pool. Mr. Yaremchuk stated that there would not be any room for a deck. Mr. Covington stated that only 4 ft. setback was required for a pool from the property line. Mr. Yaremchuk stated that he had to agree with the Chairman that there was really not any hardship in this application. He sympathized with the applicant about the pool but he indicated that he felt the applicant could work it out. Mrs. Day inquired if the applicant had any access to any clubs with pools. Mr. Saunders stated that he did not belong to any club which was conveniently close. He stated that the closest club he had access to was 25 miles away. Mr. Saunders stated that he had arthritis in both knees and wrists and had a medical disability from the service. Mr. DiGiulian showed the plat to Mr. Saunders to determine other alternatives. Mr. Yaremchuk inquired as to why a diving board was necessary.

144

In response to questions from the Board, Mr. Saunders stated that he had owned the property for a number of years. He stated that he had purchased the property in January of 1966 and liked the area very much. He stated that no one had approached him at all with any objections to the pool. Mrs. Day stated that the Board needed to get down to the hardship as far as land use.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-A-166 by WESLEY W. & ANN W. SAUNDERS, under Section 18-401 of the Zoning Ordinance to allow construction of swimming pool and spa 25 ft. from front lot line (such accessory structure or use req. not to be located in any front yard by Sect. 10-105) on property located at 6835 Winter Lane, tax map reference 71-2((14))15, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 20,748 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being a corner lot and has an unusual condition in the location of the existing buildings on the subject property and has a problem with drainage on the east side of the lot which makes construction of the pool on that side of the property not feasible.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion failed by a vote of 2 to 2 (Mr. Smith & Mrs. Day)(Mr. Hyland being absent).

Page 144, October 6, 1981, Scheduled case of

11:50 A.M. TOLLGATE II & EMMA J. & RUTH E. HINKINS, appl. under Sect. 18-401 of the Ord. to allow subd. into 6 lots with proposed lots 2, 3, 4 & 5 each having width of 7.50 ft. (70 ft. min. lot width req. by Sect. 3-406), located 2350 & 2458 Great Falls St., 40-4((1))28 & 29, Dranesville Dist., R-4, 87,320 sq. ft., V-81-D-167.

Mr. Lee Phillips of Park Avenue in Falls Church represented the applicant. Mr. Phillips stated that the property was previously owned by Mr. Fitzwater. The property to its right was owned by Mr. Hinkins. There was an existing dwelling on each of the lots, such dwellings being located on the front of the properties. The Hinkins occupied the dwelling on lot 6 and would continue to occupy it. Mr. Phillips stated that the Hinkins wished to develop the rear portion of the property. The property was basically in Falls Church and was zoned R-4. Mr. Phillips stated that the proposal was for a subdivision of 6 lots all of which would exceed the minimumlot size. He informed the Board that the subdivision for the Fitzwater property had been approved back in March. Since that time, the Hinkins had expressed a desir

Page 145, October 6, 1981, Scheduled case of
TOLLGATE II & EMMA J. & RUTH E. HINKINS
(continued)

145

to develop their property. Chairman Smith inquired as to the hardship. Mr. Phillips stated that the Hinkins would have to provide the access and the pipestems. The property fronted on Great Falls Street which was heavily travelled. The pipestem would have a safer entrance and had been encouraged by the Health Department. Chairman Smith noted that the approval for the Fitzwater property had been granted by a 3 to 2 vote. Mr. Phillips stated that the property was already in the form of 3 lots. The width of the pipestem would be reduced from 12 ft. to 7½ ft. Chairman Smith stated that there was existing dwelling on each of the lots presently and he inquired as to why that was not a reasonable use of the land. Mr. Phillips responded that the property was zoned R-4. The houses were close to the front of the lots leaving over 1½ acres to the rear which was not developable by any other means. Chairman Smith stated that this plan would make it worse. Mr. Phillips stated that 4 of the 5 parcels were already existing. Chairman Smith stated that it was true that 4 of the 5 parcels were existing but the applicant was cutting down the original granting which had passed by a mere majority. Mr. Phillips stated that the proposal was to build a 18 ft. roadway in the pipestems which would adequately serve the property. Mr. Phillips stated that it seemed to him to be a logical way to use the property to overcome the difficulty of the extreme depth of the property. Chairman Smith stated that part of the property was located in the City of Falls Church. Mr. Phillips stated that was correct and indicated that the City of Falls Church had already approved the plat and were completely aware of what was being done.

There was no one else to speak in support and no one to speak in opposition.

Page 145, October 6, 1981 Board of Zoning Appeals
TOLLGATE II & EMMA J. & RUTH E. HINKINS

R E S O L U T I O N

In Application No. V-81-D-167 by TOLLGATE II & RUTH E. HINKINS under Section 18-401 of the Zoning Ordinance to allow subdivision into 6 lots with proposed lots 2, 3, 4 & 5 each having width of 7.50 ft. (70 ft. min. lot width req. by Sect. 3-406) on property located at 2350 & 2358 Great Falls St., tax map reference 40-4((1))28 & 29, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following limitations:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 87,320 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including long and narrow and has an unusual condition in that the applicant is not able to dedicate and meet the Ordinance provisions for setbacks.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 145, October 6, 1981, Scheduled case of

12:00 NOON — J. HARRISON & MARY D. HANCOCK, appl. under Sect. 18-401 of the Ord. to allow construction of a detached garage 10 ft. from the side lot line (20 ft. min. side yard req. by Sects. 3-107 & 10-105), located 3013 Sylvan Dr., Sleepy Hollow Subd., 50-4((21))56, Mason Dist., R-1, 49,967 sq. ft., V-81-M-168.

146

Mr. Hobbs of Arlington, Virginia, represented the Hancocks. He informed the Board that he was a friend of the Hancocks and would present their case. The application was to allow a variance from the 20 ft. requirement to 10 ft. between lot 7 and lot 56. He stated that the reason for seeking the variance was because they did not have any other convenient place to put the garage. If the garage were located further back on the property and in accordance with the setbacks, it would be on irregular ground. Mr. Hobbs stated that the property dropped off and was heavily wooded. The property was zoned R-3 behind the Hancocks and the subject property was zoned R-1.

Chairman Smith inquired as to why they did not make the garage a part of the structure of the house. Mr. Hobbs stated that the existing trees and grading up to the house prevented it being attached to the house. In addition, he stated that if the garage were joined to the house, the Hancocks would have the expense of window wells and it would cut down on the light for the house. Mrs. Day inquired if this was a one car garage and was assured by Mr. Hobbs that it was. Mrs. Day noted that there were woods behind the house and she inquired about the topography. Mr. Hobbs responded that the property sloped off sharply to a ravine and was heavily wooded. Mr. Hobbs informed the Board that he was new to these types of hearing and had to depend on the Board's questions. Mrs. Day inquired if the garage could be located directly behind the house. Mr. Hobbs stated that it would create the same problems.

Mr. Roy T. Messer of 3018 Sylvan Drive spoke in support of the variance. He informed the Board that he lived across the street. Mr. Messer stated that what was noticable to him was the side lot line was the back lot of all the properties on that side. He stated that it would be very difficult to place the garage behind the house at right angles and would require a large amount of removal of landfill. Mr. Messer stated that he owned lot 58. He stated that it was his understanding that all of the lots that bordered Mr. Hancock's lot had no objections to the variance.

There was no one else to speak in support and no one to speak in opposition. Mr. Harrison Hancock informed the Board that he had not received any objections from the neighbors and had signed statements in support from two neighbors who resided within 45 ft. of the proposed garage.

R E S O L U T I O N

In Application No. V-81-M-168 by J. HARRISON & MARY D. HANCOCK under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage 10 ft. from the side lot line (20 ft. min. side yard req. by Sects. 3-107 & 10-105) on property located at 3013 Sylvan Drive, tax map reference 50-4((21))56, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, apublic hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 49,967 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being narrow and has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property as there is a 50 ft. sanitary easement crossing the rear of the lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

R E S O L U T I O N

147

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 147, October 6, 1981, Scheduled case of

12:10 P.M. LOUIS V. BLASIOTTI, appl. under Sect. 18-401 of the Ord. to allow resubd. of 2 lots such that proposed lot 78A would have width of 64.28 ft. & proposed lot 79A would have width of 120.49 ft. (150 ft. min. lot width req. by Sect. 3-107), located 9020 Murnan St., Little Vienna Estates Subd., 38-1((9))78 & 79, Centreville Dist., R-1, 85,878 sq. ft., V-81-C-169.

Mr. Daniel L. Robey, an attorney, located at 311 Park Avenue in Falls Church represented the applicant. For information regarding the testimony presented, please refer to the verbatim transcript on file in the Clerk's office.

Page 147, October 6, 1981 Board of Zoning Appeals
LOUIS V. BLASIOTTI

R E S O L U T I O N

In Application No. V-81-C-169 by LOUIS V. BLASIOTTI under Section 18-401 of the Zoning Ordinance to allow resubdivision of 2 lots such that proposed lot 78A would have width of 64.28 ft. & proposed lot 79A would have width of 120.49 ft. (150 ft. min. lot width req. by Sect. 3-107) on property located at 9020 Murnan Street, tax map reference 38-1((9))78 & 79, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zining is R-2.
3. The area of the lot is 20,748 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being a corner lot and has an unusual condition in the location of the existing buildings on the subject property and has a problem with drainage on the east side of the lot which makes construction of the pool on that side of the property not feasible.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 2 to 2 (Mr. Smith & Mrs. Day)(Mr. Hyland being absent).

12:30 P.M. PLEASANT VALLEY RECREATION ASSOCIATION, INC., appl. under Sect. 3-203 of the Ord. to permit community recreation facilities including swimming pool, tennis courts and associated parking, located Cub Run Rd., Pleasant Valley Subd., 33-4((2))E1, Springfield Dist., R-2(C), 4.4891 ac., S-81-S-053.

148

Mr. Ed Johnson of 307 Maple Avenue in Vienna represented the applicant. He stated that the application was to establish a community use. The property had been set aside by the developer for the homeowners use. The area to be served was the Pleasant Valley Subdivision. Mr. Johnson stated that the membership would be about 500. The hours of operation would be from 10 A.M. to 9 P.M., seven days a week from Memorial Day to Labor Day.

Mr. Larry Palmer, President of the Civic Association, residing at 4325 Cub Run Road informed the Board that the was speaking personally and was in favor of the application. He stated that the issue was whether the BZA should grant the special permit and he informed the BZA that he was in support of it.

There was no one else to speak in support and no one to speak in opposition.

PLEASANT VALLEY RECREATION ASSOCIATION, INC.

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-S-053 by PLEASANT VALLEY RECREATION ASSOCIATION, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to permit community recreation facilities including swimming pool, tennis courts and associated parking, located at Cub Run Road, tax map reference 33-4((2))E1, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-2(C).
3. That the area of the lot is 4.4891 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. A copy of this Special Permit and 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Enviromental Management.
7. The number of memberships shall be 500.
8. The hours of operation shall be 10:00 A.M. to 9:00 P.M., daily.
9. The number of parking spaces ahll be 42.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 149, October 6, 1981, Scheduled case of

12:45 P.M. GREAT FALLS BOARDING KENNELS, INC., appl. under Sect. 3-E03 of the Ord. to amend S-154-75 for kennel to permit continued operation for a new term, located 8920 Old Dominion Dr., 13-4((1))31, Dranesville Dist., R-E, 2.123 ac., S-81-D-056.

149

Mr. Eric Wyant informed the Board that the kennel was operated by a family corporation. The original use permit had been granted in 1960. Mr. Wyant stated that he felt he offered a great service and offered employment opportunities to the community. He stated that he had a good, established business and was seeking renewal of the special permit.

In response to questions from the Board, Mr. Wyant stated that there were 44 runs and 88 cages. Mr. Wyant stated that there was a letter of support from one of his neighbors contained in the file. Mr. Covington informed the Board that the last special permit has been granted for a period of three years with the Zoning Administrator empowered to grant three one-year extensions.

A neighbor residing at 9107 Old Dominion Drive spoke in support of the renewal. He informed the Board that he did not know of any neighbor who was not in favor of the continuation of the special permit. He stated that Mr. Wyant's business was a credit to the neighborhood and was well kept and well run. There was no one else to speak in support and no one to speak in opposition.

GREAT FALLS BOARDING KENNELS, INC.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-D-056 by GREAT FALLS BOARDING KENNELS, INC. under Section 3-E03 of the Fairfax County Zoning Ordinance to amend S-154-75 located at 8920 Old Dominion Drive, tax map reference 13-4((1))31, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-E.
3. That the area of the lot is 2.123 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days boefore the expiration date and the permit shall remain valid until the extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. A-y additional strcutures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit is granted for a period of three years with the Zoning Administrator empowered to grant three one-year renewals upon written request at least 30 days prior to the expiration date.

150

8. The hours of operation shall be 8:00 A.M. to 6:00 P.M., six days a week.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 150, October 6, 1981, Scheduled case of

1:00 P.M. LINCOLNIA ACADEMY, INC./THOMAS J. & ELEANOR M. DENNIS, appl. under Sect. 3-203 of the Ord. to amend S-183-78 to permit continuation of private school and day care center without term, located 4905 Lincoln Ave., Lincolnia Park Subd., 72-3((10))2, Mason Dist., R-2, 31,234 sq. ft., S-81-M-058.

Mr. Dennis of 5001 Lincolnia Avenue in Alexandria informed the Board that he and his wife owned and operated the Lincolnia Academy which was a preschool and day care center. He stated that the original permit was granted for three years with three renewals. He stated that they were issued without question. In 1978, he applied for another three year renewal. Mr. Dennis stated that they proud of their record. The children attending the center were between the ages of 2 years and 9 years. He stated that they had never had any complaints. Mr. Dennis stated that he kept the grounds well groomed. Mr. Dennis informed the Board that he did one other request. He stated that he had a permit and had erected a sign with a maximum of 4 sq. ft. He stated that he wanted to increase the square footage of the sign. It would be very much like the Fairfax County Park Authority sign. The sign would have the name and address on part of the boards with a router and would be painted. Chairman Smith advised Mr. Dennis that the sign matter was a different issue and would have to be a separate application. He stated that the applicant should give the sign matter a lot of thought as he was only permitted a maximum of 4 sq. ft. and would have to have a good justification for increasing the size.

In response to questions from the Board, Mr. Dennis stated that the hours of operation for the use were from 7 A.M. to 6 P.M., Monday through Friday. There were 35 children between the ages of 2 and 9. Mr. Dennis stated that the 9 year olds were kept after school. He stated that there were 7 parking spaces available. With regard to the request for operation of the day care center without term, Chairman Smith stated that it was his thinking that the use was better controlled with a term on it.

There was no one else to speak in support and no one to speak in opposition.

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-M-058 by LINCOLNIA ACADEMY, INC./THOMAS J. & ELEANOR M. DENNIS under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-183-78 to permit continuation of private school and day care center without term, located at 4905 Lincoln Avenue, tax map reference 72-3((10))2, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 31,234 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

151

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The ages of the students shall be from 2 through 9 years.
8. This permit is granted without term.
9. All other conditions of S-77-72 and S-183-78 not altered by this resolution shall remain in effect.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 151, October 6, 1981, Scheduled case of

1:15 P.M. L. CARL FLOYD, D.D.S., appl. under Sect. 3-103 of the Ord. to amend S-240-78 for home professional dental office to permit continuation of the use without term, located 6905 Ben Franklin Rd., Wiltshire's Fair Vernon Subd., 90-1((5))13, Springfield Dist., R-1, 24,556 sq. ft., S-81-S-061.

Dr. Carl Floyd of 6905 Ben Franklin Road informed the Board that he was granted a special permit three years ago to operate a dental office in his home. He stated that he had made himself available for emergency care any evening and on Saturday and Sunday. He stated that during the three year period, there had been an overwhelming response to his operation. Dr. Floyd stated that he was seeking renewal of his special permit without term. Mr. Covington informed the Board that there were not any time limitations in the Ordinance for home professional offices. Chairman Smith inquired if the parking was allowed to go to the property line for these uses and Mr. Covington stated that it was allowed.

There was no one else to speak in support and no one to speak in opposition.

Page 151, October 6, 1981 Board of Zoning Appeals
L. CARL FLOYD, D.D.S.

RESOLUTION

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-S-061 by L. CARL FLOYD, D.D.S. under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-240-78 for home professional dental office to permit continuation of the use without term located at 6905 Ben Franklin Road, tax map reverence 90-1((5))13, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 24,556 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

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

RESOLUTION

152

2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be 7 A.M. to 10 P.M.
8. This special permit is granted without term.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 152, October 6, 1981, Scheduled case of

1:30 P.M. KARL & LORRAINE BERGSTRESSER, appl. under Sect. 18-401 of the Ord. to allow construction of an attached garage & addition to dwelling to 17.7 ft. from the side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2847 Hill Rd., Oakcrest Subd., 47-2((3))502, Centreville Dist., R-1, 26,487 sq. ft., V-81-C-148. (DEFERRED FROM SEPTEMBER 15, 1981 FOR ADVERTISING OF ADDITION TO DWELLING.)

Mr. Karl Bergstresser of Vienna informed the Board that his primary motivation for the filing of the variance was that he needed more space in his home. His home consisted of three bedrooms with one bathroom. He stated that he had one child with another one on the way. Mr. Bergstresser stated that there was also an increasing need for storage space. He stated that there was structural damage to his present garage caused by the weight of the snow which caused the roof to pull away from the garage. He stated that he wanted to construct an addition to his dwelling as well as a garage. He stated that he could not put the addition in the back of his property because of the drainfield and the pool. Any addition to the right of the house would be out-of-place and would be a eyesore. Mr. Bergstresser stated that he did not wish to build at the front of the house.

Mrs. Day inquired about the damaged garage. Mr. Bergstresser stated that he was still using the garage but that the roof had pulled away and there had been some shifting. Mrs. Day inquired if the garage was used as a garage. Mr. Bergstresser replied that he used it for storage of tools, etc. Mrs. Day inquired if the width of the garage could be reduced. Mr. Bergstresser stated that his builder had recommended 24 ft. width for the garage. He informed the Board that a minimum 20 ft. garage would still require a variance of 5 inches. Mrs. Day inquired if there was anything that the applicant could do. Chairman Smith stated that it was a small house. Mr. Bergstresser stated that the drainfield would get in the way of building elsewhere.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-C-148 by KARL & LORRAINE BERGSTRESSER under Section 18-401 of the Zoning Ordinance to allow construction of an attached garage & addition to dwelling to 17.7 ft. ftom the side lto line (20 ft. min. side yard req. by Sect. 3-107) on property located at 2847 Hill Road, tax map reference 47-2((3))502, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

RESOLUTION

153

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 26,487 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being narrow and has exceptional topographic problems in the rear and has an unusual condition in the location of the existing buildings towards the front of the property and the proposed location for the garage is the only possible location due to the large drainfield at the rear of the lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 153, October 6, 1981, Scheduled case of

1:45 P.M. ENTERPRISE LEARNING CENTER, appl. under Sect. 3-303 of the Ord. to amend S-80-D-107 for a private school of general education to permit change of permittee & continuation of the use without term, located 1670 & 1674 Chain Bridge Rd., 30-3((1))54 & 55, Dranesville Dist., R-3, 174,000 sq. ft., S-81-D-062.

There was a question on the notices regarding a contiguous property owned by the Fairfax County Park Authority. The applicant was in receipt of a waiver signed by the secretary to the Fairfax County Park Authority. Mr. DiGiulian moved that the Board accept the waiver and that the notices be considered in order for the purpose of the public hearing. Mr. Yaremchuk seconded the motion. The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Mr. John Armstrong of Enterprise Learning Center located at 1670 & 1674 Chain Bridge Road represented the applicant. He informed the Board that this was a private, non-profit school. The purpose of the application was to ask for a change of permittee and a continuation of the use without term. He stated that this would allow the Enterprise Learning Center to move its present quarters to a much more suitable location which would provide greater service to the community. In response to questions from the Board, Mr. Armstrong stated that at the present time there were only about a dozen students. He informed the Board that he hoped to have from 35 to 50 students but that 55 would be the maximum. The ages of the students would be 13 to 18 years of age and the hours of operation would be 8:30 A.M. to 3:30 P.M., Monday through Friday.

Chairman Smith noted that the previous permit was granted to Children's Achievement Center on December 16, 1980 for a period of one year. He inquired if the new applicant was purchasing the property but was informed by Mr. Armstrong that they were leasing the property. Mr. Armstrong stated that the lease terms were the same as for Children's Achievement Center. It would be for a period of three years.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-D-062 by ENTERPRISE LEARNING CENTER under Section 3-303 of the Fairfax County Zoning Ordinance to amend S-80-D-104 for a private school of general education to permit change of permittee & continuation of the use without term, located at 1670 & 1674

154

Chain Bridge Road, tax map reference 30-3((1))54 & 55, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the applicant is the contract purchaser.
2. That the present zoning is R-3.
3. That the area of the lot is 174,000 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in aecordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 55, ages 13 through 18.
8. The hours of operation shall be 8:30 A.M. to 3:30 P.M., Monday through Friday.
9. The number of parking spaces shall be 8.
10. This special permit is granted for a period of three years subject to the renewal of the lease for the last year.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 154, October 6, 1981, Scheduled case of

2:00 P.M. DR. A. BRUCE SHAUER, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 1.0 ft. from the edge of a floodplain (15 ft. min. distance between a dwelling and edge of floodplain req. by Sect. 2-415) located 2504 Brentwood Pl., Hybla Valley Farms Subd., 102-1((7))511A, Mt. Vernon Dist., R-2, 24,186 sq. ft., V-81-V-182.

Mr. Thomas Kerns, an architect, represented Dr. Shauer. Mr. Kerns stated that Dr. Shauer wanted to construct a two car garage on the west side of his property. The property was a corner lot and the home was placed within 26 ft. of the east property line but was 100 ft. to the west property line. Mr. Kerns advised the Board that there was a floodplain area in the western portion of the property. The applicant was requesting permission to construct his garage 1.0 ft. from the edge of the floodplain. Mr. Kerns stated that there was a drop between the house and the area where the stream was located. He stated that there was an existing garage which would be convereted into a play area. Chairman Smith questioned the size of the proposed garage. Mr. Kerns resplied that a 25'x22' garage was necessary as the house did not have a basement. Mr. Kerns informed the Board that the floodplain area had been improved five years ago with three 30" pipes. The area of the proposed garage did not contain any trees and the remainder of the property was heavily wooded. He stated that any location on the property would require a variance. Mr. Kerns advised the Board that this

Page 155, October 6, 1981 Board of Zoning Appeals
DR. A. BRUCE SHAUER
(continued) RESOLUTION

155

proposed location was the best suitable one. He further stated that there was a sanitary sewer easement on the property.

There was no one to speak in support and no one to speak in opposition.

Page 155, October 6, 1981 Board of Zoning Appeals
DR. A. BRUCE SHAUER
RESOLUTION

In Application No. V-81-V-182 by DR. A. BRUCE SHAUER under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 1.0 ft. from the edge of a floodplain (15 ft. min. distance between a dwelling and edge of floodplain required by Sect. 2-415) on property located at 2504 Brentwood Place, tax map reference 102-1((7))511A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 24,186 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, being shallow and has an unusual condition in that there is a floodplain over one-third of the lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 155, October 6, 1981, Scheduled case of

2:15 P.M. PAUL J. & TERESA M. KLAASSEN T/A SUNRISE TERRACE, INC., appl. under Sect. 3-203 of the Ord. to amend Special Permit granted June 11, 1957 and amended May 17, 1960 for nursing facilities for a maximum of 27 patients, to permit change of permittee, located 10322 Blake La., 47-2((1))70, Providence Dist., R-2, 1.7465 ac., S-81-P-051. (DEFERRED FROM SEPTEMBER 15, 1981 & SEPTEMBER 22, 1981 FOR ADDITIONAL INFORMATION).

Chairman Smith inquired if there were any questions regarding the information presented in the staff report. As there were none, he inquired if the Board was prepared to make a motion.

Page 155, October 6, 1981 Board of Zoning Appeals
PAUL J. & TERESA M. KLAASSEN T/A SUNRISE TERRACE, INC.
RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-P-051 by PAUL J. & TERESA M. KLAASSEN T/A SUNRISE TERRACE, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to amend Special Permit granted June 11, 1957 and amended May 17, 1960 for nursing facilities for a maximum of 27 patients, to permit change of permittee, located at, 10322 Blake Lane, tax map reference 47-2((1))70,

156

County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 6, 1981; and

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

1. That the applicant is the contract purchaser.
2. That the present zoning is R-2.
3. That the area of the lot is 1.7465 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted for the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, ghanges in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of patients must be 27.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 156, October 6, 1981, Passed over case of

FRANK D. BARLOW, III: V-81-P-127: The Chairman called the 10:15 case of Frank D. Barlow and there was not anyone to answer the call. Accordingly, it was the consensus of the Board to defer the variance application until October 21, 1981 at 1:30 P.M. because of a lack of representation.

//

Page 156, October 6, 1981, After Agenda Items

Jack Chocola, V-78-79: The Board was in receipt of a request from Mr. Jack Chocola for an extension of his variance appliation. It was the consensus of the Board to grant Mr. Chocola a six month extension.

// There being no further business, the Board adjourned at 4:10 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on June 9, 1983

Daniel Smith, Chairman

Approved: June 14, 1983
Date

157

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Wednesday, October 21, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland (arriving at 3:00 P.M.); and Ann Day.

The Chairman called the meeting to order at 10:30 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. REHEARING: MR. & MRS. LES POMEROY, appl. under Sect. 18-401 of the Ord. to allow construction of 21 ft. high detached garage with attic, 4 ft. from the rear & side lot lines (21 ft. min. rear yard & 12 ft. min. side yard req. by Sects. 3-307 & 10-105), located 7009 Raleigh Road, Broyhill Crest Subd., 60-4((2))270, Mason Dist., R-3, 10,500 sq. ft., V-81-M-105.

Due to an error in notification on the part of the Clerk, the rehearing was rescheduled for November 3, 1981 at 1:00 P.M.

//

Page 157, October 21, 1981, Scheduled case of

10:30 A.M. JOHN E. & SHIRLEY A. HEWITT, appl. under Sect. 18-401 of the Ord. to allow construction of deck 16.9 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 12501 Lt. Nichols Rd., Fair Oaks Estates Subd., 45-2((6))249, Centreville Dist., R-3(C), 10,924 sq. ft., V-81-C-170.

Chairman Smith advised the applicants there were only four Board members present at this point in the meeting. He questioned whether the Hewitts were the owners of the property. Mr. Simmons of Paciulli, Simmons & Associates informed the Board that the Hewitts now owned the property. Chairman Smith questioned the application as it indicated the deck was to be constructed. Mr. Simmons replied that the deck was already constructed. Chairman Smith stated that the application was not advertised properly as it should have been advertised to allow the deck to remain. He stated that the builder had constructed the deck without a building permit. Chairman Smith stated that the Board would not have had the problem if the builder had gotten a building permit prior to construction. Chairman Smith noted that the application was originally listed with the Scarborough Corporation as the owners. Mr. Covington stated that the staff had changed the names when the Hewitts purchased the property. Mr. Simmons stated that the application was error as far as the deck and inquired if that was a problem. Chairman Smith stated that it was a problem as far as he was concerned. The application should have been filed under the mistake section. Mr. Simmons stated that it was his error and asked if there was a problem in the way the application could be presented. Mrs. Day stated that it should be filed under Sect. 18-406.

Chairman Smith stated that the Board could only listen to the arguments under Section 18-406 and that the application had to be advertised under the mistake section. It was the consensus of the Board to defer the variance until November 24, 1981 at 10:30 A.M.

//

Page 157, October 21, 1981, After Agenda Items

Burke United Methodist Church, S-81-S-057: The Board was in receipt of a letter from the Burke United Methodist Church seeking an amendment to its approved parking, condition no. 9, to change the number of required parking spaces to 33. Mrs. Day moved that the Board amend condition no. 9 to indicate 33 parking spaces. Mr. Yaremchuk seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

//

Page 157, October 21, 1981, After Agenda Items

Chesterbrook Swimming Club, Inc., V-81-D-158: The Board was in receipt of revised site plan of the Chesterbrook Swimming Club, Inc., as conditioned in no. 3 of the resolution. It was the consensus of the Board that the revised site plan did not comply with the conditions of no. 3 as the pipestem driveway shown on the revised plan was only 6 ft. in width in lieu of the required 12 ft. minimum. Accordingly, the BZA requested that the club submit new revised plans.

//

Page 158, October 21, 1981, Scheduled case of

10:40 A.M. LAURENCE JOHN & SHIRLEY A. LINDQUIST, appl. under Sect. 18-401 of the Ord. to allow construction of a swimming pool 34 ft. from a street line on a corner lot (such accessory structure or use req. not to be located in any front yard by Sect. 10-105), located 7732 Ogden Ct., Shermont Subd., 49-2((14))1, Providence Dist., R-3, 16,362 sq. ft., V-81-P-171.

Mr. Lindquist of 7732 Ogden Court informed the Board that his house was located in the extreme corner of the property. He stated that trying to locate the pool at the back without extending on the side was an unreasonable hardship. Mr. Yaremchuk inquired as to what the front setback was for the R-3 district. Mr. Covington responded that the setback was 30 ft. for a lot 36,000 sq. ft. or greater. Mr. Yaremchuk stated that Mr. Lindquist was not able to locate the pool anywhere on the property because of the location of the house. The street was a dead-end. Mr. Lindquist stated that lot 171 in back of him was notified of the hearing but there was no response. Chairman Smith stated that the applicant had plenty of room to construct the pool. Mr. Yaremchuk stated that it was better to place the pool to one side than just in the middle of the yard. In response to questions from the Board, Mr. Lindquist stated that the house was constructed in 1961. Mr. Lindquist stated that he felt it would be fairer to his neighbor not to have the pool so close to him. Mr. DiGiulian stated that the length of the pool was 41 ft. He stated that the applicat could still meet the setback and have 9 ft. from the adjacent neighbor. Chairman Smith stated that the applicant could place the pool on the property without a variance and there was not any hardship. He inquired of the applicant if he were familiar with the criteria used by the Board in granting variances. Chairman Smith stated that if there was another alternative, the Board could not grant a variance. Mr. Lindquist stated that he understood the intent was to limit visibility.

There was no one else to speak in support and no one to speak in opposition.

Page 158, October 21, 1981 Board of Zoning Appeals
LAURENCE JOHN & SHIRLEY A. LINDQUIST

R E S O L U T I O N

In Application No. V-81-C-171 by LAURENCE JOHN & SHIRLEY A. LINDQUIST under Section 18-401 of the Zoning Ordinance to allow construction of a swimming pool 34 ft. from a street line on a corner lot (such accessory structure of use req. not to be located in any front yard by Sect. 10-105) on property located at 7732 Ogden Court, tax map reference 49-2((14))1, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 16,362 sq. ft.

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

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

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

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 158, October 21, 1981, Scheduled case of

10:50 A.M. DENNIS R. HAMEL, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing porch 7.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), located 6638 Fisher Avenue, Brilyn Park Subd., 40-4((5))85, Dranesville Dist., R-4, 10,400 sq. ft., V-81-D-172.

Mr. David Allygood of 6638 Fisher Avenue represented Mr. Dennis R. Hamel. He stated that Mr. Hamel wanted to use the existing porch and attached ceiling rather than erecting another porch somewhere else on the property. Mrs. Day inquired as to what the porch would be used for. Mr. Allygood stated that once the porch was enclosed, it would be a sum parlor to house plants during the winter months. Mrs. Day inquired as to what was located at the rear of the house. Mr. Allygood informed her the addition on the rear was completed five or six

159

years ago. He stated that the addition was a recreation room which had been constructed by the previous owner. Mrs. Day inquired if the proposed addition would have a southern exposure and was informed it would. Mr. Allygood stated that the porch would not be extended at all. The variance was for 3 ft. as the minimum requirement was 10 ft. He stated that the porch would not encroach any closer to the lot line than it was already. Mr. DiGiulian inquired as to how long the porch had been on the house and was informed the house was 20 years old. Mr. Allygood stated that he did not know when the porch was constructed. He stated that once it was enclosed, it would not be a heated room. He stated that there would not be any electricity. The room would only be used to house plants.

Mr. Covington informed the Board that an open porch could go as close as 5 ft. to the line. Mrs. Day inquired as to what the exterior of the porch would look like. Mr. Allygood stated that the porch would be enclosed with sliding glass doors all the way around. Outside would have eight arches to give the porch a Mediterranean look.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-D-172 by DENNIS R. HAMEL under Section 18-401 of the Zoning Ordinance to allow enclosure of existing porch 7.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407) on property located at 6638 Fisher Avenue, tax map reference 40-4((5))85, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 10,400 sq. f.t
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and the existing porch is within 7 ft. of the property line and the enclosure of the porch would not come any closer to the property line.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an estension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 159, October 21, 1981, Scheduled case of

11:00 A.M. ROBERT B. LANHAM & DEBRA B. BERGOFFEN, appl. under Sect. 18-401 of the Ord. to allow construction of a deck addition to dwelling to 3 ft. from rear lot line (14 ft. min. rear yard req. by Sects. 2-412 & 3-507), located 1678 Wainwright Dr., Coleson Cluster Subd., 17-2((13))(15)63, Centreville Dist., PRC, 1,748 sq. ft., V-81-C-173.

160

Mr. Robert B. Lanman & Debra Bergoffen of 1678 Wainwright Court informed the Board that without a variance, they would not be able to construct the deck of any usable size since the property line was about 15 ft. from the rear of their townhouse. Mr. Lanman stated that the justification was set forth in the papers filed with the application. He stated that the deck had been approved by the Reston Architectural Review Board as far as meeting their standards.

Chairman Smith asked Mr. Lanman to elaborate on his written statement as he did not understand about the R-5 conditions being required. Ms. Bergoffen informed the Board that the townhouse was constructed under set of building conditions and after it was completed, then a different set of zoning requirements came into play. She stated that was part of their hardship. Mr. Covington explained the standards of the PRC zoning which necessitated comparison with the closest zoning category. In response to questions from the Board, Ms. Bergoffen stated that they had owned the property for 15½ years. She informed the Board that neighbors had been allowed to construct decks up until last May. Mr. Covington stated that the Zoning Ordinance currently in effect was begun on August 14, 1978. Up until that time, there was only a 24 ft. distance required between dwellings. Then it went to 15 ft. with the new Ordinance but was later amended to require the PRC to be compared to the most comparable zone.

Chairman Smith stated that the variance could not be granted unless the applicant proved a hardship. Mr. Lanman stated that the hardship was that they could not build a deck now. Chairman Smith stated that was correct but then no one else could build one either. He stated that the applicants resided in a townhouse. Mr. Lanman stated that he understood the purpose of the variance were to show that the requirements would deprive him of the reasonable use of the property. Chairman Smith stated that everyone living in the townhouse development had the same general conditions. He stated that it was general condition and was not a specific hardship to the applicant only.

Ms. Bergoffen stated that she had spoken with Supervisor Pennino and was advised that the variance route was the only route open to them. She stated that she had been informed that the provision was being looked at. Chairman Smith stated that it was a general condition. Based on the existing Ordinance, the applicant had reasonable use of the lot by virtue of the large townhouse.

Mr. DiGiulian inquired as to when the deck was constructed on lot 62. Ms. Bergoffen stated that the deck was constructed last May. Mr. DiGiulian inquired if the deck was constructed with the latest amendment change. Mr. Covington stated that it could have been allowed by a different interpretation. Mrs. Day noted that the townhouse on lot 62 set further back. Mr. Covington stated that the applicants' property had a shallow rear yard. Mr. DiGiulian inquired if the applicants had talked to anyone about the deck extending into the existing sewer easement. Mr. Covington replied that the applicants would have to obtain a hold harmless agreement.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-C-173 by ROBERT B. LANMAN & DEBRA B. BERGOFFEN under Section 18-401 of the Zoning Ordinance to allow construction of a deck addition to dwelling to 3 ft. from rear lot line (14 ft. min. rear yard req. by Sects. 2-412 & 3-507) on property located at 1678 Wainwright Drive, tax map reference 17-2((13))(15)63, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is PRC.
3. The area of the lot is 1,748 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being shallow.

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

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

161

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. This variance approval is subject to approval from the Department of Public Works for a Hold Harmless agreement for the extension into a sanitary sewer easement.

Mr. Yaremchuk seconded the motion.

The motion failed by a vote of 2 to 2 (Mr. Smith & Mrs. Day)(Mr. Hyland being absent).

Page 161, October 21, 1981, Discussion on motion
of Robert B. Lanman & Debra B. Bergoffen

Chairman Smith advised the Board that the situation for this townhouse was a general condition created by an amendment to the Ordinance and the applicants did not meet the hardship provision of the Ordinance. He stated that it was true that the applicants' lot was small but there were other lots of the same dimensions all over the County. Mr. Covington stated that the townhouse did not even meet the minimum rear yard requirement of 20 ft. Chairman Smith stated that if there was a hardship, it was created by the amendment to the Ordinance. Mr. DiGiulian stated that it was a hardship if the lot was shallow as the lot might even be a substandard lot. Chairman Smith stated that he was not disagreeing with Mr. DiGiulian but the Code was very specific that variances only be granted when it was close to confiscation. Mr. Yaremchuk asked the Chairman to define confiscation. Chairman Smith stated that it was when an applicant did not have reasonable use of his land or property. Mr. DiGiulian stated that was also subject to interpretation.

Mrs. Day inquired as to why the applicant could not put the deck up higher and not all the way to the property line. Chairman Smith stated that there had not been discussion about whether this was a minimum variance or not. Chairman Smith inquired if the applicant could build a 10 ft. feck up on the second floor. Mr. Covington stated that he could not without a variance.

The motion failed as noted in the above resolution.

//

Page 161, October 21, 1981, Scheduled case of

11:10 A.M. GEORGE & LINDA GAIL KOMAR, appl. under Sect. 18-401 of the Ord. to allow construction of swimming pool within, and a greenhouse and pool filter equipment enclosure additions to, a detached garage which was constructed with variances (V-297-79) to the min. side & rear yard requirements, located 9603 Bel Glade St., Floyd Park Subd., 48-3((17))9, Providence Dist., R-1, 21,782 sq. ft., V-81-P-174.

As there was a question on notices, the Board broke for a period of fifteen minutes in order to resolve the problem. The notices were ruled in order. Mr. George Komar of 9603 Bel Glade Street in Fairfax informed the Board that he was asking for a variance for an indoor pool which would be used for exercise and swimming laps. The indoor pool would be placed inside an existing garage and greenhouse away from the property line. Mr. Komar stated that the purpose of the pool was for he and his wife to exercise because of a disease his wife had. In response to questions from the Board, Mr. Komar stated that he was the owner of the property at the time of the previous variances. Chairman Smith inquired if the applicant had not stated that the variance was for construction of a garage. Mr. Komar stated that was the purpose at that time. He stated that there was not any other location in his yard for an indoor pool. He stated that he was seeking the variance for economic reasons. Chairman Smith inquired as to the hardship under the Ordinance. Mr. Komar replied that he had a variance for the garage. The pool would be inside the structure and would not be visible to the neighbors. He stated that it was not his intent to build a pool at the time he applied for a variance for the garage.

Mr. Yaremchuk stated that if the pool was inside the garage, why was the applicant before the BZA. Chairman Smith stated that the applicant was prevented from constructing the pool. Mr. Yaremchuk inquired as to why the construction was not allowed by right. Mr. Covington replied that when the BZA grants a variance, it is for a specific purpose as shown on the plat. That

was the reasoning taken to deny the building permit for the pool. Mr. Yaremchuk inquired if the staff had ever had another case like this and Mr. Covington replied they had not. Mr. Covington informed the Board that the garage was attached to the house. He stated that the applicant needed a variance for the greenhouse also. Mr. Yaremchuk stated that he understood the greenhouse but not the pool.

Chairman Smith inquired if the garage had already been constructed and was informed it had. Mr. Covington stated that the building permit was attached to the staff report. Mr. Komar stated that the garage was 28 ft. x 40 ft. He stated that he would construct the pool to be 14 ft. x 40 ft. and park the car on the other side. Mr. Yaremchuk stated that prior to August 14th, the applicant could have constructed the pool by right. He stated that this was the sort of variance the BZA had asked the Board of Supervisors to examine because it created a hardship on some individuals.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-P-174 by GEORGE & LINDA GAIL KOMAR under Section 18-401 of the Zoning Ordinance to allow construction of swimming pool within, and a greenhouse and pool filter equipment enclosure additions to, a detached garage which was constructed with variances (V-297-79) to the minimum side and rear yard requirements, on property located at 9603 Bel Glade Street, tax map reference 48-3((17))9, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 21,782 sq. ft.
4. That the applicant's property has an unusual condition in that the lot is substandard and that the garage was constructed with a variance previously granted and that to locate the pool inside the garage would not cause an adverse effect to the neighbors and the location of the proposed greenhouse is in the most feasible location.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 162, October 21, 1981, Scheduled case of

11:20 A.M. JOHN D. & MARGUERITE BAILEY, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 12 ft. from side lot line such that total side yards would be 27.3 ft. (12 ft. min. but 40 ft. total min. side yard req. by Sect. 3-107), located 6501 Shady Knoll Ct., Langley Oaks Subd., 21-4((18)) 93A, Dranesville Dist., R-a(C), 20,735 sq. ft., V-81-D-175.

163

Mrs. Marguerite Bailey of 6501 Sandy Knoll Court in Langley informed the Board that the house in question was a model home. The builder had enclosed the garage and changed it into a living space. She informed the Board that she had a water problem. In order to fix it, the whole driveway had to be dug up. She stated that now they had to construct another driveway. Because they had to go to the expense of a new driveway, they wanted to put in a garage. She informed the Board that there was still a great deal of vacant space on that side of the house. There was a School Board easement on one side. The location of the house next door was about 40 ft. away from the treeline. She informed the Board that the Architectural Review Board had approved the plans for the garage. Mrs. Bailey informed the Board that the garage was not a full size garage. It would only be 20 ft. wide.

In response to questions from the Board, Mrs. Bailey stated that she and her husband had owned the property for two years. She stated that the garage enclosed by the builder was being used as living space. Chairman Smith inquired as to the justification or hardship. Mrs. Bailey stated that the hardship was that they had to dig up the whole area anyway. She stated that the water drained off the house and was draining into the basement. The heat pump has to be relocated. She informed the Board that she wanted a garage. Mrs. Day inquired as to how the construction of the garage would channel the water. Mrs. Bailey responded that the area would have to be filled in. By doing so, she felt that the water problem would be corrected.

Mrs. Day inquired if lot 94 had a structure near the line. Mrs. Bailey stated that the rear of their house was further forward than her house. She stated that her house was angled on the lot. The back of the house was at least 40 ft. from the treeline.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-D-175 by JOHN D. & MARGUERITE BAILEY under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 12 ft. from side lot line such that total side yards would be 27.3 ft. (12 ft. min. but 40 ft. total minimum side yard req. by Sect. 3-107), on property located at 6501 Sandy Knoll Court, tax map reference 21-4((18))93A, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 20,735 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being triangular in the front and has exceptional topographic problems at the location of the existing garage area due to water flow into the basement of the dwelling.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 164, October 21, 1981, Scheduled case of

11:30 P.M. WILLIAM ROSS STOTT, JR., appl. under Sect. 18-401 of the Ord. to allow construction of addition to attached garage to 12 ft. from side lot line, such that total side yards would be 30.9 ft. (12 ft. min. but 40 ft. min. side yard req. by Sect. 3-107) located 3239 Betsy La., Garnchayne Subd., 36-3((8))10, Centreville Dist., R-1(C), 25,791 sq. ft., V-81-C-176.

164

Mrs. Margaret Stott of 3932 Betsy Lane in Herndon informed the Board that they wanted to expand an existing one car garage into a two car garage. She stated that the addition would improve the looks of the neighborhood and would decrease vandalism as well as house both cars. In response to questions from the Board, Mrs. Stott stated that they had owned the property for four years. Chairman Smith stated that this was a new cluster subdivision. He indicated that several homes had similar conditions. Mrs. Stott replied that most of the homes already had two car garages. Chairman Smith inquired as to the hardship as defined by the Ordinance. Mrs. Stott stated that if the variance were granted, there would still be a total side yard of 30.9 ft. She stated that there was a 40 ft. side yard at the present time. Mr. Yaremchuk noted that no matter where the garage would be located, a variance would be necessary because of the narrow lot. Chairman Smith stated that this lot had the same width as every other lot in the subdivision. Mr. DiGiulian stated that this particular lot appeared to be a little more narrower to him. Chairman Smith stated that the lots all looked the same to him. He stated that all of the lots had been developed to the maximum.

Mrs. Day inquired as to what was located on lot 11. Mrs. Stott replied that the house on lot 11 was narrower than hers. However, it had a two car garage. She stated that it fit the lot better. Mrs. Day inquired as to how far it was from the property line and was informed it was about 12 ft. from the line. Mrs. Stott informed the Board that not one of her neighbors had expressed any opposition to the variance.

There was no one else to speak in support and no one to speak in opposition.

Page 164, October 21, 1981 Board of Zoning Appeals
WILLIAM ROSS STOTT, JR.

R E S O L U T I O N

In Application No. V-81-C-176 by WILLIAM ROSS STOTT, JR. under Section 18-401 of the Zoning Ordinance to allow construction of addition to attached garage to 12 ft. from side lot line such that total side yards would be 30/9 ft. (12 ft. min. but 40 ft. min. side yard req. by Sect. 3-107) on property located at 3239 Betsy Lane, tax map reference 36-3((8))10, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 25,791 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including narrow and that the addition to the existing garage meets the minimum side yard but not the total side yard which necessitates the variance;

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Hyland being absent).

Page 165, October 21, 1981, Scheduled case of

165

11:40 A.M. DAVID G. SKIADOS, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 4.4 ft. side lot line contiguous to pipestem driveway (25 ft. min. front yard req. by Sect. 2-416), located 2748 Oldewood Dr., Oldewood Subd., 49-2((1))64B, Providence Dist., R-3, 12,500 sq. ft., V-81-P-177.

Mr. David Skiados of 2748 Oldewood Drive informed the Board that he was seeking a variance to permit the construction of a garage within 4.4 ft. of a pipestem driveway. He stated that from his understanding of the Zoning Ordinance, the 25 ft. restriction was implemented to discourage builders from building homes with pipestem driveways. Mr. Skiados stated that the amendment was implemented to the Code in April, Zoning Admendment No. 28, which was two years after the purchase of his property. Mr. Skiados stated that he did not have any other alternatives. He could not build at the rear right side becasue it would have to be free standing which would not give protection from the elements. Other areas on the property were not suitable because they were too small or lacked adequate frontage or because of a sanitary sewer easement on the side. He informed the Board that the granting of the variance would give him reasonable use of the land and would increase the value of his home and other lots also.

Mr. Yaremchuk inquired as to what irregular about Mr. Skiados' lot. Mr. Skiados stated that if the pipestem went straight down on the left side to the road, it would give him 37 ft. on the side of his house. Mr. Yaremchuk stated that the applicant had to be aware of the pipestem when he purchased the property. He also stated that the house presently had a carport. Mr. Skiados stated that his home was a three bedroom rambler without any basement and did not have storage space. Mr. Yaremchuk stated that it appeared that the applicant was overbuilding the lot. Mr. Skiados presented the Board with photographs. He informed the Board that he had purchased the property expecting to be able to add onto it. Mr. Yaremchuk stated that the lot was almost perfectly rectangular. He asked what the hardship was as far as land use. Mr. Skiados stated that he had a lot of land on the left side. He stated that he wanted to protect his automobiles and did not have any storage space. Mr. Skiados stated that he wanted to improve his well being. Mr. Yaremchuk replied that those were financial considerations.

Mrs. Day inquired if the property was on a septic tank and was informed it was not. She next inquired if the applicant could swing the garage around in front of the house. Mr. Skiados responded that it would not blend in at that location. Chairman Smith stated that it might not be the ideal location but it was possible with the ranch style house. Mr. Skiados asked to be able to present his case for additional living space. He informed the Board that his family was expanding. He wanted to be able to put lawn tools in a well-kept storage area.

Chairman Smith inquired if the applicant had reviewed the statement from Design Review that the variance could have an adverse impact on the maintenance of the pipestem because of the closeness. Mr. Skiados stated that the pipestem had been a driveway for the past 3½ years and was 40 ft. from the back of the house. Mr. DiGiulian inquired as to the distance from the edte of the driveway to the front corner of the garage. Mr. Skiados stated that it would be 13.9 ft. Mrs. Day inquired if this was next to the right-of-way for Vepco and was informed no one could be there because of the high power lines. Mr. Skiados stated that there was a park there, the Jefferson District Park, and that a house would never be constructed.

Mr. Bruce Vast of 2742 Oldewood Drive informed the Board that he lived to the right of Mr. Skiados. He stated that the placing of the garage on the left side of the house would have a view of the street. He indicated that there was a vast amount of land in this area. Placing the garage at the rear would crowd him and the other properties. Mr. Vast stated that the flow of the addition would add to the lines of the house. He stated that he did not feel it would be detrimental in view of the fact that nothing could be built next to the golf course. Mr. Vast stated that the addition would improve the value of everyone's property.

Chairman Smith stated that this was one of the lots that was granted a variance for less frontage. Mr. Covington stated that the variance was granted for the pipestem. There was no one else to speak in support. Mr. Charles Collier of 2752 Oldewood Drive spoke in opposition. He presented the Board with photographs. Mr. Collier stated that he owned lot 64. Mr. Collier felt that Mr. Skiados had not demonstrated a real hardship as he already had an existing carport. Mr. Collier stated that he had purchased his home in good faith that his view of the roadway would not be obscured. He stated that the construction of a garage on Mr. Skiados' property would affect the value of his property. He stated that the garage would be enclosed from the back and he would have to look into a brick wall. Mr. Collier stated that his home would not be visible from the street and would be subject to vandalism. In addition, he stated that there would be a problem for the Fire & Rescue Services when tryiing to locate his home during emergencies. Mr. Collier stated that it would hamper the rescue effort if they could not view his home from the street. Mr. Collier stated that the garage would hamper parking because he would not be able to park in the pipestem. His guests would have to park in the street. Mr. Collier stated that Mr. Skiados had four or five vehicles for his family use. Mr. Collier stated that Mr. Skiados liked to work on his Corvette and had a dismantled one in his carport and one to the side on the grass. If the garage were allowed, the property would lend itself to more car repairs which would be a detriment to the neighborhood. Mr. Collier stated that the proposed garage would change the aesthetics of the neighborhood.

166

Mr. Collier was also concerned that the construction of the garage would increase drainage. He informed the Board that he already had a fair amount of drainage problems. Mr. Collier stated that the downspouts for the garage would have to drain on his property. Mr. Collier informed the Board that this nieghborhood did not lend itself to this type of variance. He stated that if the homes were side by side, he would be more sympathetic. Mr. Collier requested the Board to deny the variance. He stated that the Code was put in for the protection of individuals living on pipestems.

There was no one else to speak in opposition. During rebuttal, Mr. Skiados stated that the builder could not promise that nothing would ever be built on the land. Mr. Skiados stated that the builder had informed him that he could build on his land. As far as crime, there was one house that could not be seen from the roadway at all. He stated that if the County had crime in mind at all, they would not have approved the location of the house. Mr. Skiados stated that there was adequate space for fire and rescue equipment because of the dual driveway which dropped off to the front part of the roadway. Mr. Skiados stated that he would only have a single driveway. With regard to parking in the street, Mr. Skiados stated that Mr. Collier did not have anywhere to park on the street at the present time. Mr. Skiados stated that the comments about his personal hobby were of no concern to the BZA. Mr. Skiados stated that he had two personal vehicles licensed with Fairfax County. One was parked in the street so as not to block his wife who left at 5 A.M. each morning. Mr. Skiados stated that the garage would not make the water flow any differently. He informed the Board that there were other garages close to the property line, some as close as 1 ft. Mr. Skiados stated that the Zoning Ordinance was put into effect to keep builders from arguing about the pipestem. He stated that the Ordinance did not take into consideration the homeowners' needs, just the builders.

Page 166, October 21, 1981 Board of Zoning Appeals
DAVID G. SKIADOS

R E S O L U T I O N

In Application No. V-81-P-177 by DAVID G. SKIADOS under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 4.4 ft. from side lot line contiguous to pipestem driveway (25 ft. minimum front yard required by Sect. 2-4160 on property located at 2748 Oldewood Drive, tax map reference 49-2((1))64B, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 12,500 sq. ft.

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

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

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

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Hyland being absent).

Page 166, October 21, 1981, Recess

At 12:45 P.M., the Board recessed for lunch and reconvened at 1:45 P.M. to continue with the scheduled agenda.

//

Page 167, October 21, 1981, Scheduled case of

11:50 A.M. JOHN W. & DOROTHY P. MOFFETT, appl. under Sect. 18-401 of the Ord. to allow construction of deck additions to dwelling to 11.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 9114 Home Guard Dr., The Oaks at Signal Hill Subd., 78-2((16))456, Annandale Dist., R-3(C), 9,197 sq. ft., V-81-A-178.

167

Mr. John Moffett of 9114 Home Guard Drive in Burke informed the Board that he wanted to construct a deck to the rear of the property. He stated that the rear of his house had limited use because of wet and soggy soil due to its lower elevation in relation to the surrounding properties. Mr. Moffett stated that he was requesting the builder to correct the water flow and he presented the Board with a copy of this request. In response to questions from the Board, Mr. Moffett stated that there was a concrete slab at the rear of his house at the present time. Mr. Moffett stated that he had a retaining wall. Ten feet of the area was a hillside. He stated that at the base of where the hill touched the lower area, he had started to construct a retaining wall. There was a fence on the upper part of the property. Chairman Smith inquired if there was a recessed balcony on the second floor. Mr. Moffett replied that there was a recessed balcony on the front of the house. Chairman Smith stated that this was a cluster subdivision. Mrs. Day noted that the subdivision had small lots. Chairman Smith stated that the lots were small because it was a cluster area. Chairman Smith inquired as to the size of the deck and was informed it would be 15'x18'. Mrs. Day stated that the property was irregular in shape. Mr. Moffett stated that he wanted to extend the deck to the left side of the house as that was the corner where the water settled the most. He stated that his property was narrow in front. He stated that his house was situated to the extreme rear of the property.

Chairman Smith inquired as to why the deck could not be moved over to the right facing the house. Mr. Moffett stated that the water was even worse there as it drained to the right. He stated that the water came down from the property above and across the back yard down along the side. The developer had stated that this was a natural swale. Mr. Moffett advised the Board that even a moderate rainfall left the ground soggy. He stated that his yard was very shallow. Chairman Smith inquired if any of the other homes had decks. Mr. Moffett stated that the properties to his left and right had decks. The house to the left, no. 455, had required a variance. Lot 457 had enough room to construct the deck without a variance. Mr. Moffett informed the Board that the property line angled down across the property. He stated that there was a diminishing amount of property to the rear of the house. Mr. DiGiulian stated that it appeared there was 15 ft. on one side, 12 ft. on the other and 30 ft. long.

Mrs. Day inquired if Mr. Moffett was able to take the deck straight out at the rear of his house towards the left instead of having it further out to the right. She stated that it would reduce the size of the deck but then it would not be so close to the property line. Mr. Moffett responded that the sun was on the southwest corner of the house. The other side of the house was all shaded. He stated that he was trying to make the deck useful to absorb some moisture. Mr. Moffett stated that the ground was soggier on the other side. He stated that he was concerned about the drainage ditch. Mr. Moffett stated that the concrete slab was 8" high. He informed the Board that the deck would not be more than 10" to 12" off of the ground.

There was no one else to speak in support and no one to speak in opposition.

Mrs. Day moved that the Board deny the variance application as the applicant had not satisfied the Board that physical conditions existed which would prove to be a difficulty or hardship to him. The motion died for lack of a second.

Chairman Smith stated that he preferred to defer the application until the Board could determine whether lot 455 had a variance on it. He asked the Board to defer the application for additional information. It was the consensus of the Board to defer the decision until October 27, 1981.

//

Page 167, October 21, 1981, Scheduled case of

12:00 NOON EDWIN J. MONSMA, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling 11 ft. from one side lot line and 13.1 ft. from the other (15 ft. min. side yard req. by Sect. 3-207), located 6217 Park Rd., Franklin Park Subd., 41-1((13))(2)43, Dranesville Dist., R-2, 11,415 sq. ft., V-81-D-179.

Mr. Edwin J. Monsma of 6217 Park Road in McLean was informed that the Board only had three members at the present time. One Board member was absent and another had become ill. Chairman Smith informed Mr. Monsma that in order for the variance to be granted, all three Board members would have to agree. He stated that the applicant had a right to request a deferral until another time. Mr. Monsma stated that he preferred to continue with the hearing.

Mr. Monsma informed the Board that he had a substandard, narrow lot which would not conform to the existing zoning and that the house did not conform either. He stated that he wanted to build an addition on the rear which would be further from the side lot lines than the existing house. In response to questions from the Board, Mr. Monsma stated that the house

Page 168, October 21, 1981
EDWIN J. MONSMA
(continued)

was 16 years old. Chairman Smith stated that at the time the house was constructed, it was built to the minimum side setbacks of 8 and 10 ft. Chairman Smith stated that this was a minimum addition and was surprised that the applicant was not allowed to construct an addition in keeping with the existing dwelling.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-D-179 by EDWIN J. MONSMA under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 11.0 ft. from one side lot line and 13.1 ft. from the other (15 ft. min. side yard req. by Sect. 3-207) on property located 6217 Park Road, tax map reference 41-1((13))(2)43, County of Fairfax, Virginia, Mr. DiGiuliaan moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant
2. The present zoning is R-2.
3. The area of the lot is 11,415 sq. ft.
4. That the applicant's property is ixceptionally irregular in shape being long and narrow and that the proposed addition would not come any closer to the property line than the existing dwelling.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Mr. Yaremchuk being out of the room and Mr. Hyland being absent).

Page 168, October 21, 1981, Scheduled case of

12:10 P.M. WILLIAM P. & ALICIA MENZA, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 7.7 ft. from side lot line such that total side yards would be 16.4 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 3052 Railroad Vine Ct., Five Oaks Place Subd., 48-3((34))41, Providence Dist., R-3(C), 10,660 sq. ft., V-81-P-180.

As there were only three Board members present, Mr. and Mrs. Menza elected to defer their variance application. It was the consensus of the Board to defer the application until November 10, 1981 at 12:00 Noon for a hearing by a full Board.

//

Page 169, October 21, 1981, Scheduled case of

12:20 P.M. BOBBY G. GOODMAN, appl. under Sect. 18-401 of the Ord. to allow construction of an addition to dwelling to 11.75 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 3604 Michael Ct., Annandale Gardens Subd., 60-3((22))18, Mason Dist., R-3, 15,440 sq. ft., V-81-M-181.

169

Mr. Goodman elected to proceed with the variance even though there were only three Board members present. Mr. James Malloney, an attorney in Fairfax, represented Mr. Goodman. He stated that Mr. Goodman was seeking a variance that would allow him to construct a one story addition to his home. The home was presently 14.25 ft. from the rear lot line and the new addition would be 11.75 ft. from the rear lot line necessitating a variance of 13.25 ft. Mr. Malloney informed the Board that the new addition would be 3½ ft. closer to the line than the present structure but it was only a corner of the addition that extended out. He informed the Board that Mr. Goodman had resided on the property for 20 years. The Goodmans liked their neighbors. All of the houses were on concrete slabs without basements or attics. Mr. Maloney stated that the Goodmans needed more living space. It was impossible to put the addition on any other location of the house. One problem was that all heating coils were imbedded in the concrete slab. Any addition would have to have some kind of supplementary heating. So the Goodmans decided to use solar energy panels which dictates a southern exposure. Mr. Maloney stated that the southeast corner wall was not a load bearing wall. It was impossible to put an addition on the northern and western sides as it would not fit in with the bedrooms. Mr. Malloney stated that it was after they decided on the proposed location that they discovered the addition would require a variance because the house was situated way back in the southeast corner. Mr. Malloney requested the Board to grant the variance. He presented the Board with letters of support from the neighbors, all urging approval of the variance. In addition, he presented a rendering of the proposed addition.

In response to further questions from the Board, Mr. Maloney stated that the house was built in 1951. The Goodmans had owned it since 1962. There was no one else to speak in support and no one to speak in opposition.

Page 169, October 21, 1981 Board of Zoning Appeals
BOBBY G. GOODMAN

RESOLUTION

In Application No. V-81-M-181 by BOBBY G. GOODMAN under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 11.75 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307) on property located at 3604 Michael Court, tax map reference 60-3((22))18, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 15,440 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Mr. Yaremchuk being out of the room and Mr. Hyland being absent).

Page 170, October 21, 1981, Scheduled case of

12:30 P.M. NICK M. PITTAS, appl. under Sect. 18-406 of the Ord. to allow a partially-constructed addition to dwelling to be completed and to remain 15.9 ft. from one side lot line & 18.0 ft. from the other (20 ft. min. side yard req. by Sect. 3-107), located 6227 Villa St., Cameron Villa Farms Subd., 81-4((3))L, Lee Dist., R-1, 20,633 sq. ft., V-81-L-183.

170

Mr. Bruce Lambert, an attorney located at 3061 West Ox Road, represented the applicant. He informed the Board that Mrs. Pittas was also present at the hearing. Mr. Lambert informed the Board that a permit had been granted when the applicant put in a septic tank which was required by the Health Department. Then he began construction on the home. They had put up three rooms and a bathroom and were going to complete the outside when they were notified that the permit was issued in error. They were told to discontinue the work. Chairman Smith inquired as to why the permit was revoked. Mr. Lambert stated that the permit was revoked because of the side yard. The house was situated at an angle and was not parallel with the street. After construction, it would shorten the side yard from what had been reported at the time the permit was issued. Mr. Lambert stated that it would leave a side yard of 15.9 ft. and 18.0 ft. The Pittas' had a loan on the property and had owned the property for two years. They secured a loan in order to put in the well and septic and do all of the other work required by the Health Department.

Mr. Lambert stated that the applicant applied for a variance and had sent out all of the required notification. The application was filed under Sect. 18-406 to allow the dwelling to be completed and to allow the side yards to remain. In response to questions from the Board, Mr. Lambert stated that the applicants had applied for the building permit. One permit was applied for by the husband and issued on June 16, 1981. The second permit asking for something different was applied for by Mrs. Pittas and approved on July 16, 1981.

Mr. H. L. Copeland, Jr. of 6223 Villa Street in Alexandria spoke in support of the variance. He informed the Board that he lived next door and had been looking at the structure for 18 years. Mr. Copeland stated that the Pittas had performed a miracle on the property and he was proud to live next door to it. Mr. Copeland stated that his house was only 9 ft. from the property line. Their house was the same type.

Mr. Louis E. Darr of 6220 Villa Street in Alexandria also spoke in support. He resided across the street from the Pittas. He stated that he had looked at the house for 38 years. The Pittas' had spent money to rebuild it and he was in favor of the new addition being added to the house.

Mr. James Woodard of 10652 Meadow Grove Court in Manassas informed the Board that he was a co-owner of the lot next door to the Pittas. He had three questions to be presented to the Board. He stated that he was not against the addition. However, they had gotten permission from his ex-wife to fill the well on his property which was not to his satisfaction. He stated that his yard was torn up by the tractors. In addition, the whole back yard of the Pittas was nothing but sand and bare gravel. Any heavy rain would wash this onto his yard. He stated that they did not have sod on the back yard. Chairman Smith inquired if that was where the septic field was located. Mr. Woodard stated that the Pittas did not have the funds to complete the project. He stated that they were building a two story addition and he wanted to know when it would be completed and what they were going to do about his yard.

Chairman Smith inquired as to why the Pittas' had to fill in the well on Mr. Woodard's property. Mr. Lambert replied that the well was unused and they were required to fill it in by the Health Department. Mrs. Woodard had given her permission to the Health Department Chairman Smith stated that the statement did not hold water as far as he was concerned. Mr. DiGiulian stated that it was a Health Department requirement that septic fields not be located closer than 100' to a well. The well was 55 ft. from the septic field and was unused and had to be filled in. Chairman Smith stated that the Health Department would not make them fill in. Mr. Lambert stated that the Pittas would place Mr. Woodard's yard back in shape. He stated that they would guarantee that it would be done and it would include seeding. Chairman Smith inquired about seeding in the septic lot area and whether construction could be completed in six months. Chairman Smith stated that before the non-rup was issued, he wanted the property inspected by the Zoning Office to determine that the conditions had been complied with.

RESOLUTION

Mrs. Day made the following motion:

In Application No. V-81-L-183 by NICK M. PITTAS under Section 18-406 of the Zoning Ordinance to allow a partially-constructed addition to dwelling to be completed and to remain 15.9 ft. from one side lot line & 18.0 ft. from the other (20 ft. minimum side yard required by Sect. 3-107) on property located at 6227 Villa Street, tax map reference 81-4((3))L, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board of Zoning Appeals on October 21, 1981; and

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

THAT the building permit was issued after which the applicant proceeded with construction. Subsequently, the building permit was cancelled and non-compliance was not the fault of the applicant.

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

THAT the grnating of this variance 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.

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. The applicant is required to seed Lot K in the area that was disturbed by the applicant. This seeding shall be completed within six (6) months. The Zoning Office shall inspect Lot K to insure that this requirement is carried out.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. Yaremchuk and Hyland being absent).

Page 171, October 21, 1981, Scheduled case of

12:40 P.M. MORRIS R. & JO AN W. BOSIN, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport to 6.6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 8102 Hatteras La., Ravensworth Farm Subd., 79-2((3))(22)15, Annandale Dist., R-3, 10,800 sq. ft., V-81-A-159. (DEFERRED FROM SEPTEMBER 22, 1981 FOR NOTICES.)

Mr. Morris Bosin of 8102 Hatteras Lane in Springfield informed the Board that he wanted to have a 10'x11' room where the remainder of the existing carport was located. In response to questions from the Board, Mr. Bosin stated that he had a screened porch to the rear of the carport. He stated that he had a small dining room adjacent to his kitchen. Chairman Smith inquired as to the size of the porch behind the carport. Mr. Bosin stated that the porch was 10'x14' Mr. DiGiulian inquired if the existing carport extended from the front of the house to the back of the porch and was informed it did. Mr. DiGiulian stated that the carport appeared to be about 30 ft. long. Mr. DiGiulian inquired if Mr. Bosin was going to enclose the rear portion of the carport. Mr. Bosin stated that he planned to enclose the rear 11 ft. He stated that he had owned the property for 9 years. The house was built in 1962. The subdivision was about 18 to 20 years old. Mr. Bosin stated that he only wanted to enclose the rear portion of the carport.

There was no one else to speak in support and no one to speak in opposition.

Page 171, October 21, 1981 Board of Zoning Appeals
MORRIS R. & JO AN W. BOSIN

R E S O L U T I O N

In Application No. V-81-A-159 by MORRIS R. & JO AN W. BOSIN under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 6.6 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307) on property located at 8102 Hatteras Lane, tax map reference 79-2((3))(22)15, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,800 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property.

172

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. Yaremchuk and Hyland being absent).

Page 172, October 21, 1981, Scheduled case of

1:00 P.M. THOMAS F. QUALEY, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 11.8 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 12415 Caisson Rd., Cannon Ridge Subd., 55-4((4))28, Springfield Dist., R-1, 40,197 sq. ft., V-81-S-192.

Mr. Thomas Qualey was informed by the Chairman that there were only three Board members to hear his application. Chairman Smith was concerned as it was quite a variance. Mr. Qualey asked to proceed with his application. Chairman Smith stated that this was a fairly new subdivision. Mr. Qualey stated that it was 7 years old. Mr. Qualey informed the Board that he wanted a garage addition to his home. The way the house was situated on the lot, it prevented construction other than the way proposed. He stated that on the other end of his house was a sanitary sewer easement. Construction of a garage in the front would block off windows. Mr. Qualey stated that the ground sloped off sharply to the rear. Mr. Qualey stated that this was the only area he had for a garage. All of the homes in the subdivision had garages either attached or within the home itself. He stated that his home did not have a garage.

In response to questions from the Board, Mr. Qualey stated that he purchased his home three years ago. He stated that he believed the reason his home did not have a garage was because of the sanitary sewer easement. Chairman Smith inquired as to why the garage could not be located in the rear yard. Mr. Qualey responded that in order to put the garage in the rear, he would have to put his driveway along the northwest side of the house which would cut across the sanitary easement. He stated that it would still be less than 20 ft. from the side lot line. Chairman Smith stated that the driveway could be within the 20 ft. but that the building had to set back 20 ft. Mr. Qualey stated that he had 200 ft. Poplar trees through his back yard and the garage in the rear would change the appearance of the property. Mr. Qualey stated that the neighbors on lot 27 had their home a long distance away.

Mrs. Day inquired as to what the neighbors had on lot 27 that would be next to the garage. Mr. Qualey responded that the neighbors had a lot of trees and a tool shed about 30 to 40 ft. from the property line. The house itself was situated about 150 ft. from the location of the driveway. He stated that the area was well secluded by trees on both sides. Mrs. Day questioned Mr. Qualey about his rear yard as he had indicated that construction was impossible in the rear. She stated that the plat showed a well and a sun deck in the rear and she wanted to know why he could not place the garage in the rear. Mr. Qualey stated that his property was densely treed with 200 ft. Poplars. Mrs. Day stated that he had a deep back yard. Mr. Qualey stated that he could not say that it was impossible to build in the rear but the trees would have to be removed and his driveway would have to be extended. He stated that further back, his property sloped off and he was not quite sure about drainage problems. Mr. Qualey stated that he was requesting a one car garage. Mrs. Day stated that it was slightly oversize. She inquired as to what living space Mr. Qualey had since the builder did not give him a garage. Mr. Qualey stated that he had a recreation room along the southeast of the house. The opposite end was where the workroom area was located.

There was no one to speak in support and no one to speak in opposition. Chairman Smith stated that he hoped the Board deferred the variance to determine whether there had ever been a garage for this house. It was the consensus of the Board to defer the application for decision until November 10, 1981 at 12:15 P.M.

//

173

Page 173, October 21, 1981, Arrival of Board Member

At 3:00 P.M., Mr. Hyland arrived and remained for the rest of the scheduled agenda.

//

Page 173, October 21, 1981, Scheduled case of

1:15 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195.

Mr. DiGiulian announced that his firm had prepared the plats for this application and that he would not participate in the discussion or the vote on the application. Mr. William Donnelly, an attorney in Fairfax, represented the applicant. He stated that the justification was very strong and he suggested that the Board proceed with the hearing but defer decision until Tuesday night when there was a full Board. Chairman Smith stated that he would rather wait and have the entire hearing at one time. Mr. Donnelly reminded the Board that his client had asked for an out-of-turn hearing as he had serious time constraints. Mr. Donnelly stated that he could not afford to take a deferral for any more than one week. Chairman Smith informed Mr. Donnelly that he would take a look at the property before the next meeting. The variance was deferred until October 27, 1981 at 9:00 P.M.

//

Page 173, October 21, 1981, Scheduled case of

1:30 P.M. FRANK D. BARLOW, III, appl. under Sect. 18-406 of the Ord. to allow a house with attached garage to remain 19.3 ft. from side and 21.5 ft. from a rear lot line (20 ft. min. side yard & 25 ft. min. rear yard req. by Sect. 3-107) and to allow deck to remain 12.3 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 2852 Cedarest Rd., Melville Subd., 49-3((2))12, Providence Dist., 16,018 sq. ft., R-1, V-81-P-127. (DEFERRED FROM AUGUST 4, 1981 FOR NOTICES AND FROM OCTOBER 6, 1981 FOR LACK OF REPRESENTATION).

Mr. Jeff Moore of 1115 West Broad Street in Falls Church represented Barlows, Inc. In response to a question from the Chairman, Mr. Moore stated that a building permit had been issued but he did not have a copy with him. He stated that he only had a copy of the mechanical permit. Mr. DiGiulian stated that the Board needed to see a copy of the permit and the plat that was submitted for approval of the building permit. Mr. Moore explained to the Board that the error occurred because the setback on two corners of the house was not correct. Chairman Smith stated that the Board needed the plat presented with the permit application. The Board recessed to allow Mr. Moore an opportunity to get the plat.

//

Page 173, October 21, 1981, After Agenda Items

Results of Joint Meeting with the Board of Supervisors: The Chairman signed the following letter to be forwarded to Mr. Lambert, County Executive:

" October 21, 1981

Mr. J. Hamilton Lambert
County Executive
4100 Chain Bridge Road
Fairfax, Virginia 22030

Dear Mr. Lambert:

Thank you for arranging the joint meeting between the Board of Zoning Appeals and the Board of Supervisors on October 5, 1981. The consensus of the Board members was that this was a very informative and helpful two hour meeting.

The Board of Zoning Appeals has directed me to request the Board of Supervisors to provide staffing to the Zoning Administrator's Office to make it possible for the Zoning Administrator to furnish the BZA with a comprehensive staff report comparable to the staff reports provided to the Board of Supervisors for Special Exceptions.

In addition, it is requested that the instructions to the applicants applying for variances/special permits be amended to include the Section of the Ordinance outlining the three specific provisions under which a variance may be authorized. The applicant's shall be required to furnish a detailed written statement outlining how the variance request answers

174

each of the three provisions. It should be noted that all three provisions must be present before the BZA would authorize such a variance. With respect to special permit applications, the applicant shall be required to provide a detailed written statement as to what is being proposed, the extent of the proposal, hours of operation, etc. These detailed written statements from the applicants should be included in the staff report to the BZA.

Hopefully, these new requirements in the staff report would give the BZA members the vital information necessary to judge each of the applications on the merits.

Sincerely yours,

Daniel Smith, Chairman
Board of Zoning Appeals

cc: Theodore J. Wessel
Philip G. Yates
David T. Stitt
Board of Supervisors

Discussion of Joint Meeting: Mr. Hyland stated that the Board had an opportunity to chat and had talked about the subject of additional staff input and information. He stated that the letter prepared by the Chairman fairly expressed the Board's conversation and he had no problem with it. Mr. Hyland stated that in the past, he had felt that the Board had sufficient information that would allow it to make decisions on the merits of the case and the staff reports had been adequate. In those other cases where the information was not adequate, the Board had asked for additional information. Mr. Hyland stated that he would never oppose getting additional information but he wanted to temper it with the fact that he wanted to support that the BZA would not require additional staff requests for materials that were not necessary. He stated that there had to be some reasonable approach to what staff was expected to get into. Mr. Hyland stated that he hoped the Zoning Administrator would use discretion in the degree of information brought to the BZA. Mr. Hyland stated that he had mixed feelings.

Mr. Hyland stated that one thing the Board had not had in the past, and it was raised at the meeting with the Board of Supervisors, was in the area of floor area ratio. Mr. Hyland stated that the BZA did not have the beneift or the thinking of the County Attorney which would have been very helpful. Mr. Hyland stated that he raised the issue in that context because after the meeting with the Board of Supervisors, he was not certain in what context the Board felt a variance should be granted in a given case. He stated that when you took a court case, it was the opinion of the individual Board members as to what the hardship was. Mr. Hyland stated that the Board needed to establish criteria.

Chairman Smith stated that there were still some things left undone and unsaid and unresolved. He stated that the Board should continue to discuss these matters with the County Attorney's Office. He hoped that the Board members would encourage input from the County Attorney's Office.

Mr. Hyland stated that the joint meeting had been a good one as the Supervisors had put things on the table. Mr. Hyland stated that the one concern he had was that he came away from the meeting no knowing whether the Board of Supervisors felt that the BZA had the authority or the right in any given case to grant a variance. Mr. Hyland stated that the general consensus seemed to be that a number of variances were granted without justification and there was some question as to whether they should have been granted. Mr. Hyland inquired as to the circumstances under the Ordinance in which the BZA could vary the impact of the regulations to the citizens. He stated that there were circumstances, the Board had them, and they fall within a pattern and were proper. Mr. Hyland stated that he did not think that the BZA took the standards lightly. The BZA considered each case on its own merit. Mr. Hyland stated that he raised the question because he thought it would be helpful to pin it down.

Chairman Smith suggested that the Board set up a meeting with the County Attorney. Mr. DiGiulian stated that the discussion should be during the public meeting and not in the back room. The Clerk was directed to check on a date and provide the information to the BZA at the next meeting.

//

Page 175, October 21, 1981, Continuation of Recessed Case of

1:30 P.M. FRANK D. BARLOW, III, appl. under Sect. 18-406 of the Ord. to allow a house with attached garage to remain 19.3 ft. from side and 21.5 ft. from a rear lot line (20 ft. min. side yard & 25 ft. min. rear yard req. by Sect. 3-107) and to allow deck to remain 12.3 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 2852 Cedarest Rd., Melville Subd., 49-3((2))12, Providence Dist., 16,018 sq. ft., R-1, V-81-P-127. (DEFERRED FROM AUGUST 4, 1981 FOR NOTICES AND FROM OCTOBER 6, 1981 FOR LACK OF REPRESENTATION).

175

Chairman Smith inquired if Mr. Moore could inform the Board as to how the error came about. Mr. Moore stated that it was his understanding that it was an engineering mistake. The engineer had staked the house before construction and had set up off-set stakes. Apparently, someone went by one of the off-set stakes which turned the house towards the back of the lot. Mr. Moore stated that it was an honest mistake in selecting the wrong stake which thereby threw the whole back corner off. Mr. DiGiulian inquired if some of the stakes were missing. Mr. Moore responded that when the construction crew came to dig the footings, there was only one stake. There was an error in checking the wrong stake. Consequently, when the deck was built, it extended into the setback area. Mr. DiGiulian inquired as to when the mistake was realized. Mr. Moore stated that no one knew of the mistake until the final survey. Mr. Moore stated that he hoped it would be the purview of the BZA to accept the variance at this time.

There was no one else to speak in support and no one to speak in opposition.

Page 175, October 21, 1981 Board of Zoning Appeals
FRANK D. BARLOW, III

R E S O L U T I O N

Mr. DiGiulian made the following motion:

In Application No. V-81-P-127 by FRANK D. BARLOW, III under Section 18-406 of the Zoning Ordinance to allow a house with attached garage to remain 19.3 ft. from side and 21.5 ft. from a rear lot line (20 ft. minimum side yard & 25 ft. minimum rear yard required by Sect. 3-107) and to allow deck to remain 12.3 ft. from rear lot line (19 ft. minimum rear yard required by Sects. 3-107 & 2-412) on property located at 2852 Cedarest Road, tax map reference 49-3((2))12, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 1981; and

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

THAT non-compliance with the result of an error in the location of the building subsequent to the issuance of a building permit.

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

THAT the granting of this variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 175, October 21, 1981, After Agenda Item

Batal Builders, V-81-C-117: The Board was in receipt of a request from Chip Paciulli regarding reconsideration for the denied variance application of Batal Builders, V-81-C-117 heard by the BZA on October 6, 1981. John from Mr. Paciulli's Office informed the Board that since the hearing on the 6th, he had talked to the builder and they felt they could come back with further justification to grant the variance under the mistake provisions. He stated that they could bring the builder to the reconsideration hearing as well as the property owner to try to explain the circumstances. Chairman Smith stated that there still wasn't a building permit which was necessary. John stated that he hoped the builder would be able to shed some light on why a building permit was not obtained prior to construction. Chairman Smith stated there was no excuse for not getting a permit and that the builder was in bad shape if he wanted a variance after it had been constructed. Chairman Smith stated that the Board had held a fair and equitable hearing on the matter and the BZA had no right to grant a variance. It was a self-created hardship.

Page 176, October 21, 1981, After Agenda Items
BATAL BUILDERS V-81-C-117
(continued)

176

Mr. DiGiulian inquired if the individual who built the house had also constructed the deck. John stated that he did not know it for a fact but felt that the builder would be able to answer the questions. Batal Builders had definitely constructed the house. John stated that he believed that Batal Builders might have arranged to have the deck constructed.

Mr. Hyland inquired if the Board knew why a building permit was not obtained. John responded that he did not know but that was one of the reasons why he wanted a reconsideration so that the builder could explain it to the Board. John stated that his firm had been the engineers on the job.

Chairman Smith read the provisions under the mistake section which stated that a variance could be granted if and only if it was established that such non-compliance was through no fault of the applicant or it was the result of an error in the location of a building subsequent to the issuance of a building permit and such variance did not impair the intent of the Ordinance. John explained to the Chairman that the applicant was now the homeowner in this case. Chairman Smith stated that the applicant was not the homeowner as he did not construct it.

Chairman Smith stated that it had been brought out at the hearing that Batal Builders was the responsible party. He stated that the Board could not overlook the requirements. John stated that the builder would be able to explain things. Chairman Smith inquired as to why the builder was not present at the original hearing and was informed that he had been out of town. Another reason for not providing the builder was that the agent was going under a different line of reasoning. Chairman Smith stated that the agent had not followed the Ordinance and everyone had been getting by with it and the BZA was being critizied for it. John stated that he could appreciate that but now the homeowner was faced with the possibility of having to tear down the deck that was built through no fault of his own.

Chairman Smith stated that the previous record would indicate that the builder had constructed the deck prior to the homeowner purchasing the property. He stated that the BZA could not close its eyes in order to accommodate an error for something that was done willy-nilly.

John stated that he was only asking the Board to rehear the case with the builder present and the homeowner present. Mr. Hyland advised the Board that this was a classic case in the sense that the homeowner who had nothing to do with the problem being created was faced with the deck coming down. Mr. Hyland moved the Board to refer the matter to the County Attorney's Office as to whether the factors of the case would permit the BZA to rehear the matter. Mr. Hyland stated that he would like the benefit of their opinion so he moved the Board to take the matter under advisement. Mr. DiGiulian seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

//

Page 176, October 21, 1981, After Agenda Items

Albert L. Raithel, Jr., V-81-A-162: The Board was in receipt of a request from Mr. Albert L. Raithel, Jr. for a reconsideration of his variance which was denied by the Board on October 6, 1981. It had been denied by a 2 to 2 vote. Chairman Smith inquired if Mr. Hyland was familiar with this case. Mr. Hyland stated that he had read the staff report and all of the letters in the package. Chairman Smith stated that there had been a motion made to grant-in-part which cut down the dimensions of the proposed carport and dining room. Chairman Smith stated that the Board had cut the dimensions because it was for more than a minimal variance. That motion had been defeated by a vote of 2 to 2. Chairman Smith stated that he felt the Board had been very reasonable but there were two Board members who didn't feel that way.

Mr. DiGiulian stated that he had talked with Mrs. Raithel after the hearing and she had felt very strongly that she had some input that would have had some effect on the BZA's decision. She had been sick in bed the morning of the hearing but when her husband called home and told her the variance was denied, she got out of bed and came to talk to the Board. Mr. DiGiulian stated that from what Mrs. Raithel had told him and Mr. Yaremchuk, he felt there was some input that would have had a bearing on the decision. Chairman Smith stated that Mrs. Raithel had come in the middle of another case that afternoon. Mr. DiGiulian stated that he knew that she had come in after her case was over with. Chairman Smith stated that there was nothing in the letter of reconsideration that had not been presented at the time of the original hearing. He stated that what they wanted was just for convenience and was not a matter of a hardship based on the requirements of the Ordinance. He stated that they would have to come up with facts under the Ordinance for the Board to allow it.

Mr. Hyland stated that if the motion was made to grant it in part, then obviously there was some hardship that justified the granting. Mr. Hyland stated that the matter of a foot or two was a much different issue. Chairman Smith stated that the Board had three steps to follow in granting a variance. One of the requirements was that it be a minimum variance. He stated that the cutting of 2 ft. was what he considered reasonable. Mr. Hyland stated that his question was "What is minimum?"

Page 177, October 21, 1981, After Agenda Item
ALBERT L. RAITHEL, JR.
(continued)

177

Chairman Smith stated that minimum was whether the BZA wanted to grant exactly what people asked for or whether the BZA wanted to reduce it.

Mrs. Day stated that the Raithels had retired and wanted to live in Virginia. They had a small house and wanted to extend it on each side so that Mrs. Raithel would not have to go out in the weather from the house to the garage. Mrs. Day stated that she felt they were over-extending which is why she made the motion to cut down the dimensions. She stated that she was trying to give them something rather than wholehog as she felt they were asking for too much.

Mrs. Hicks informed the Board that the Raithels had been willing to go along with the reduced carport but were standing firm on the dining room because of Mrs. Raithel's handicap. Chairman Smith stated that the Board could not consider handicaps when granting variances. Mr. Hyland cited a variance application for a family with a handicapped child in which he had been personally moved and influenced which was why he had voted for the variance. Chairman Smith stated that there were lots of handicapped people. Most of them could build ramps without any variance.

Mr. DiGiulian stated that the Board was still talking about reasonable use of the land and buildings. The BZA had granted that particular variance so that the people would have reasonable use of the land and buildings. Chairman Smith stated that in the Raithel case, there was a large house on a small lot. It was not an old house. He stated that in all of the statements presented by the Raithels, there had not been a true hardship as defined by the Ordinance. Mrs. Day stated that the Raithels were going to add more family members and wanted more room. Mr. DiGiulian stated that the present house had only 1,000 sq. ft. in it and he did not believe that was a very big house. Mr. DiGiulian stated that he felt there was justification in the way the house was situated on the lot. Chairman Smith stated that the house filled up the lot. Mr. DiGiulian stated that he did not believe it did. Chairman Smith stated that Mr. Raithel could add an addition without a variance. Mr. DiGiulian stated that the way the house was situated on the lot, he did not know how an addition could be constructed without a variance. Mrs. Day inquired if Mr. Raithel would erect another additon to the back line if more family members moved in.

Chairman Smith stated that there were a lot of people who would like to make additions to their homes as their family grew but they were have to have justification before he could support it. He stated that he had supported the Raithels in order to give them some relief. Chairman Smith stated that the applicants were going to have to justify the variances rather than having the Board members sit at the hearing finding ways to grant the variances. Chairman Smith stated that none of the applicants read the Ordinance under which they were applying. They come in and leave it up to the Board to justify it. Chairman Smith stated that the BZA was here to make decisions based on the merits of case presented by the applicant, just like a court and a judge. Mr. DiGiulian stated that Mr. Raithel must have done a pretty good job of justifying it or the Chairman would not have supported it.

Chairman Smith inquired if Mr. Hyland wanted to study the record since he had indicated he did not know how he would have voted on it. Mr. Hyland stated that the vote was 2 to 2 which basically denied the application. Mr. Hyland stated that he had some question about that rule.

The Clerk suggested that the Chair allow her to research other variances that might have been granted in the same subdivision as alluded to in the original hearing. Mrs. Hicks stated that she would get the dimensions of the additions and bring in a copy of the plat to what the sizes of the structures were in order to do a comparison.

Chairman Smith suggested that the Board take the matter under advisement until Mr. Yaremchuk was present and until the Board got the information promised by the Clerk. Chairman Smith stated that the Board would render a decision as soon as the additional information was presented.

//

Page 177, October 21, 1981, After Agenda Item

Wesley Saunders, V-81-A-166: The Board was in receipt of a request from Mr. Wesley Saunders for a reconsideration of his variance which was denied on October 6, 1981. It had also been denied by a 2 to 2 vote. It was the consensus of the Board to deny the reconsideration request as there had been other alternatives for the location of the swimming pool and the variance was not warranted.

//

Page 178, October 21, 1981, After Agenda Items

The Potomac School: The Board was in receipt of a letter for an out-of-turn hearing for the Potomac School in order to allow construction to be completed by the fall of 1982. It was the consensus of the Board to deny the request as it felt that construction could be completed in that time frame in accordance with a normal hearing process.

//

Page 178, October 21, 1981, After Agenda Items

Forthway Center for Advanced Studies: The Board was in receipt of a request from the attorney for the Forthway Center for Advanced Studies seeking a review as conditioned in the BZA's resolution. It was the consensus of the Board to seek a report from the Zoning Inspection Division so that the Board could schedule a review.

// There being no further business, the Board adjourned at 4:45 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on June 14, 1983

Daniel Smith, Chairman

Approved: June 21, 1983

178

179

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Night, October 27, 1981. The Following Board Members were present: Daniel Smith, Chairman; Gerald Hyland and Ann Day. (Mr. DiGiulian and Mr. Yaremchuk were absent).

The Chairman opened the meeting at 8:45 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. MARGARET W. PRATT, appl. under Sect. 3-103 of the Ord. to permit home professional office (health care planning & research), located 9116 Ridge La., Rolling Ridge Subd., 28-4((4))16, Providence Dist., R-1, 1.262 ac., S-81-C-063.

Chairman Smith apologized to the applicant for the late starting of the meeting. He explained that the Board had two members absent due to illness. Chairman Smith stated that the Board had a policy that when there were only three Board members present, an applicant could seek a deferral for a full Board. If this was not a concern of the applicant, then the Board would proceed with the hearing.

Mr. Joseph V. Buonassissi, II, an attorney located at 4020 University Drive, in Fairfax represented the applicant. He stated that they wished to proceed with the hearing. Mr. Buonassissi stated that the property was located at 9116 Ridge Lane and contained 1.3 acres. Mrs. Pratt had owned the property since 1957. The site was approved for a one story ranch style house with wood and aluminum siding. Mrs. Pratt operated a small not for profit office in Silver Spring, Maryland. Her occupation was the evaluation of health care programs, etc. She maintained a library of reference materials. Mrs. Pratt conducted national studies and was recognized nationally. Her clients were health agencies of the County, Federal and State governments. The proposed hours of operation for the home office would be 8 A.M. to 4:30 P.M., Monday through Friday. He stated that her staff conferred with clients at the clients' offices. The home office would not have contact with patrons, patients or pupils. The staff would consist of four individuals including Mrs. Pratt. Mr. Buonassissi informed the Board that Mrs. Pratt had been involved in health care planning for the past 15 years and had been listed in Who's Who.

Mr. Buonassissi stated that the traffic impact would be minimal and would be unnoticed in that during the week only one of two individuals would arrive and leave at 4:30. He stated that once or four times a week, an individual would leave the premises to attend meetings with the clients. He stated that traffic would not be hazardous and would not conflict with the neighborhood. He compared the traffic to a family of two adults with two teenagers.

Mr. Buonassissi informed the Board that the applicant was planning to construct an addition to the house. In response to questions from the Board, Mrs. Pratt stated that the addition would be 20'x40' and contain 800 sq. ft. of space. The addition would be on the northern side and would extend west. She stated that the entire building was protected by a wooded area. The woods would be preserved and the construction would only require the removal of a few trees. Mr. Buonassissi informed the Board that the proposed use was in harmony with the comprehensive plan and would not adversely affect the development.

In summary, Mr. Buonassissi stated that Mrs. Pratt was a planner and had been for 15 years. The office would be used by Mrs. Pratt as President of her company. The sole business was the preparation of research studies. The work was dedicated totally to research and was an on-site research activity. The office would not alter the area and would not have direct contact with the clients. The addition would have the same architectural design as the existing structure and would not present a visual problem.

Mr. Hyland inquired if there was another business similar to this one that was already established in this neighborhood. Mr. Buonassissi stated that to his knowledge, there was not. Mr. Hyland inquired as to why Mrs. Pratt was intending to locate the business in her home rather than in a place of commercial business. Mr. Buonassissi stated that there were a number of factors. Basically, the type of activity was not one considered to be a business of a commercial nature and would be compatible with the residential area. He stated that the office would only conduct research studies. It would be convenient for Mrs. Pratt as she could operate a very limited business from her home. It would save commuting time for her. He stated that one difficulty was that a commercial district would not lease a small space. Mr. Hyland inquired as to how much space in the home would be utilized by the office. Mr. Buonassissi stated that the addition would be added because of the remainder of the house was not set up for this type of activity. Mr. Hyland inquired if all three employees and Mrs. Pratt and the library and everything else would be contained in the 20'x40' room. Mr. Buonassissi stated that was the intention. In response to further questions, Mrs. Pratt stated that her business grossed $200,000 to $500,000 a year. Mrs. Day stated that it was her understanding that the home business be in the residence of the home and not an extension of the home. Mr. Buonassissi stated that the office could be either in the home itself or in the addition. He stated that he had been advised that this was permissable. Mrs. Day stated that this was an application for a home professional

office. The addition would not be part of the home. Mr. Buonassissi stated that the addition would be part of the home once it was added on. Mrs. Day stated that was not for residential use.

Chairman Smith inquired about Mrs. Pratt and her three employees. Mr. Buonassissi stated that they worked for a non-profit corporation in Virginia. The corporation was domesticated in the State of Virginia but was located at 8770 Georgia Avenue in Silver Spring, Md. He stated that the corporation was chartered in the District of Columbia but was qualified to do business in the State of Virginia. Chairman Smith inquired if Mrs. Pratt had an office in the District of Columbia but was informed the only office was in Silver Spring. Mr. Hyland inquired about the type of business in Virginia that required the qualification. Mr. Buonassissi stated that he had advised Mrs. Pratt to file for qualification in the State of Virginia.

Mrs. Britt Weaver of 9112 Ridge Lane spoke in support of the application. She stated that she lived beside Mrs. Pratt and had resided there for three years. Mrs. Weaver stated that she had no objections to the use of Mrs. Pratt's property as an office. It was her understanding that the office would not be used by more than four individuals and would not include retail sales or client visits. All parking would be at Mrs. Pratt's home in the parking areas and the use would only be granted to Mrs. Pratt. Mrs. Weaver stated that she understood that the permit would not run with the land. She stated that if these condition were met, she supported the application. Chairman Smith inquired if Mrs. Weaver was employed by the institute and was informed she was a housewife and had only recently met Mrs. Pratt.

Mr. Robert W. Ehinger of 1849 Foxstone Drive spoke in opposition to the application. He stated that he was speaking on behalf of a number of people. Mr. Ehinger stated that there were some irregularities in how the application was filed as the use was listed under Providence District by accident. Mr. Ehinger stated there were strong sentiments against the granting of the use permit. Chairman Smith stated that the plat indicated the property was located in Providence District. He stated that the property was advertised correctly as far as the parcel of land. He apologized to Mr. Ehinger for the staff not catching the mistake about the magisterial district. Mr. Ehinger presented the Board with a petition signed by approximately 170 indivduals of Foxtone Lane, Ridge Lane, Creek Crossing and Wexford. He stated that the petition was self-explanatory. The residents did not wish to establish a precedent in the neighborhood. Mr. Ehinger stated that they were aware that was not a reason for denial of an application but it reflected strongly the interest of the application.

Mr. Ehinger stated there were a substantial number of people who were interested in the denial of the application. The area included several hundred homes, two churches, one school and Westwood and several long standing businesses. Mr. Hyland inquired if any of the businesses had added an addition. Mr. Ehinger stated that Dr. Howard had a large split level home with nothing attached to the home. He stated that there was nothing that you could see as an office attachment. Mr. Ehinger stated that the people felt that the granting of the permit would be unwise and unwanted. He stated that Foxstone Drive was a very narrow street. Mr. Ehinger stated that Mrs. Pratt's residence was located at a turn-around area and was sided by woods on both sides. The road was very narrow and there was a hill. Mrs. Pratt's driveway was very steep. He stated that her employees would not be able to use her property because of the hill. Mr. Hyland stated that was conjecture. Mr. Ehinger responded that the school bus stopped at this very location. A number of school children got on the bus at the time Mrs. Pratt's employees would be coming. Mr. Ehinger stated that this was a threat as there was almost no traffic on the street.

Mr. Ehinger was not sure that if the use were granted that the County could police it to insure that Mrs. Pratt did not generate additional traffic. Mr. Ehinger stated that as well known as Mrs. Pratt was, it appeared that there was a strong chance for additional traffic. Mr. Ehinger stated that the staff report appeared to be a mimum evaluation of the use. He stated that the citizens saw the use as a threat. In addition, he understood that there would be computing equipment located on the site. He stated that the equipment would have to brought in. The equipment would have to be maintained. Mr. Ehinger stated that the residents would be seeing additional maintenance and service vehicles on the street which they had none of presently. Mr. Ehinger stated that if computers were used, he wanted to know whether it had the proper cable to withstand the electrical impulses in the area.

Mr. Ehinger stated that this application was trying to put a home in an office. The citizens were being asked to agree to an addition for a major business which was incorporated where not other business of its kind. Mr. Ehinger stated that it was unwarranted as the neighborhood was less than 3/4 mile from commercial areas. He offered to help Mrs. Pratt find adequate space. He stated that he would think she would want to be housed in a business type setting and he urged the Board to deny the request.

181

Mr. Charles F. Burhenne of 9108 Ridge Lane stated that he had resided at his home for 26 years. One reason for his long stay was the present nature of Ridge Drive and Foxstone Drive. He urged the Board to deny the special permit application.

The next speaker in opposition was Mr. R. L. Crater of Foxstone Drive. He stated that a lot of neighbors supported the statements of Mr. Ehinger as evidenced by the large turnout at the public hearing.

Mr. Dick Shield of 1852 Foxstone Drive was the next speaker in opposition. He stated that he had a carpool and had his exist from Foxstone Drive up Ridge Lane. He stated that on numerous occasions because of road conditions and becasue the trees protected the snow, it stayed on the road for weeks at a time. People who were not familiar with the area would cause hazardous conditions to the neighbors and to the children who walked up and down the street.

During rebuttal, Mr. Buonassissi stated that he had seen the petition previously. In talking to several homeowners, there was a great deal of misinformation. Mr. Buonassissi informed the Board that if they read the petition, it was drafted with some lack of knowledge as to whether or not the home office could be in an addition to or some part of the home. Mr. Buonassissi stated that he had checked with the staff and understood that it was permissable. He stated that it was the use that everyone was concerned with. Much was said about the traffic. Mr. Buonassissi stated that at the most, there would be three vehicles, the same as a family of adults and teenagers. Mr. Buonassissi stated that the use would be totally consistent with the residential character. He stated that Mrs. Pratt never had any difficulty with the snow. The computer equipment would not be heavy duty as Mrs. Pratt would only have the terminal. There would not be a computer, per se, or excessive electrical equipment. Chairman Smith inquired as to where the research information was being stored and where the computer was located. Mr. Buonassissi stated that the computer was located off-site. Mr. Buonassissi stated that all heavy analysis would be located off-site. Only the computer tapes would be located in Mrs. Pratt's home. Mr. Buonassissi stated that whether or not there was commercial office space available, the proposed home office was not excessive and was not an unwarranted intrusion. It would be totally consistent with the residential character.

Mr. Hyland inquired if there were any other individuals who came to the Silver Spring facility and if so, how many on a weekly basis. Mrs. Pratt responded that no one other than was listed in the application came to the business.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-P-063 by MARGARET W. PRATT under Section 3-103 of the Fairfax County Zoning Ordinance to permit home professional office (health care planning & research), located at 9116 Ridge Lane, tax map reference 28-4((4))16, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 27, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 1.262 acres.

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

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian and Yaremchuk being absent).

Page 182, October 27, 1981, Scheduled case of

8:15 P.M. JUAN J. & MARITZA LUNA, appl. under Sect. 18-401 of the Ord. to allow enclosure of carport which is 10.2 ft. from the side lot line (12 ft. min. side yard req. by Sect. 3-307), located 5946 Atteentee Rd., Springfield Dubd., 80-3((2))(64)32, Springfield Dist., R-3, 10,560 sq. ft., V-81-S-188.

182

Mrs. Maritza Luna of 5946 Atteentee Road was informed by the Chairman that there were only three Board members present and that she would need all three to support her request. He stated that she could request a deferral if she so desired. Mrs. Luna stated that she had been told that the law had changed three years ago. Mrs. Luna stated that her house was 10.2 ft. from the side yard line. The carport was already surrounded by the house itself. In response to questions from the Board, Mrs. Luna stated that she had owned the property for three years. She stated that she would park her car in front of the house. She stated that most of her neighbors had already enclosed their carports. Mrs. Day stated that by enclosing the structure, there would be more security for bicycles, etc.

There was no one to speak in support and no one to speak in opposition.

Page 182, October 27, 1981 Board of Zoning Appeals
JUAN J. & MARITZA LUNA

R E S O L U T I O N

In Application No. V-81-S-188 by JUAN J. & MARITZA LUNA under Section 18-401 of the Zoning Ordinance to allow enclosure of carport which is 10.2 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307), on property located at 5946 Atteentee Road, tax map reference 80-3((2))(64)32, County of Fairfax, Virginia, Mr. Hyland moved that that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,560 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and that the carport would not come any closer to the property line and that the location of the existing dwelling prevents compliance with the Ordinance which necessitates the variance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. Yaremchuk and DiGiulian being absent).

Page 182, October 27, 1981, Scheduled case of

8:30 P.M. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, appl. under Sect. 3-303 of the Ord. to amend S-80-V-003 for a church to allow change in conditions 11 and 12 of the existing special permit to permit access from street other than Lucia Lane (Prices Lane or Vernon View) during construction only and to permit grading and the disturbing of trees within 25 ft. of Prices Lane southern right-of-way line as necessary for development of the temporary construction access and the installation of utility connections, located 1911 Prices La., Mallinson Subd., 111-1((1))2, Mt. Vernon Dist., R-3, 317,988 sq. ft., S-81-V-066.

183

Mr. Hyland informed Mr. Rees that there was not a full compliment of the Board and that he had the option of requesting a deferral. Mr. Hyland stated that unless there were three supporting votes, the case could not prevail. Mr. Rees stated that the application was only for an access off of Prices Lane. The church had a temporary permit from the VDH&T for use of that access. That temporary permit had been extended on the church's representation that they were applying for this hearing tonight. Mr. Rees stated that the church was under a violation notice. He stated that he had reviewed the staff report and had some problems with the addendum. However, he stated that he needed to know the status of the violation notice.

Chairman Smith inquired of the Zoning Administrator that in view of the situation, what would be the status of the violation notice if the Board deferred the matter to a later date. Mr. Yates responded that he would have to extend the violation notice. However, he stated that he could not address the issue of the VDH&T permit.

Mr. Rees informed the Board that the temporary permit had been issued for 30 days from October 6th. He asked the hearing to go forward. Chairman Smith inquired if the Board would allow the taking of testimony at this hearing and then recess the case until November 3rd for additional testimony. Mr. Hyland stated that he had no problem with going forward with the hearing. Mr. Hyland stated that he only raised the question that he did so that the applicant would not have a decision of only three Board members. He stated that he had no objections to the Chairman's proposal and would be glad to move for a recess until November 3rd for additional testimony and for decision on that day.

Chairman Smith inquired if there was opposition to this proposal from the audience. Mr. Stephen Mitchell stated that he had no objection. Mr. Edward Fuentes inquired as to the date of the earliest night meeting. Mr. Hyland stated that the citizens had a representative. He stated that if there were any questions asked by the applicant, he would hope that the representative would have a chance to respond. Chairman Smith stated that he was trying to hold a special meeting. He informed the public that the Board did meet on Election Day.

Mr. James Rees, an attorney for the applicant, located at 8133 Leesburg Pike, informed the BZA that on April 8, 1980, the BZA had granted a special permit for the use of the property in the operation of a church facility. Under that special permit, there were twelve conditions. Mr. Rees stated that the purpose of this hearing was to clarify two of the conditions. Condition no. 11 stated that "No trees or grading in any manner shall be performed within 25 ft. of Prices Lane southern right-of-way line. Additional screening and supplemental plantings shall be provided along Prices Lane at the direction of the Director of Environmental Mangement." Condition no. 12 stated that "Means of ingress and egress shall be via Lucia Lane." Mr. Rees stated that it had been the position of the church from the granting of the special permit, that the permit governed the use of the property after the construction was completed. He stated that the use granted the right to construct the facility and then governed the use of that facility after the construction. Mr. Rees stated that that position had not been agreed by the Zoning Administrator. For that reason, the church was before the Board today for clarification.

Mr. Rees explained that when the original special permit was granted, the church did not discuss, nor did the Board discuss, nor did the staff discuss in its report, the access to the property for purposes of construction. Mr. Hyland inquired as to what had been intended in terms of access when the church came before the Board. He inquired as to what had been the plan at that time for access for construction purposes. Mr. Hyland inquired if the church had had an idea as to where it would enter the property. Mr. Rees stated that he could only speak for himself and that discussion had never come up as an issue and was never considered. He stated that it was not considered until subsequent meetings with the National Park Service when it was determined that they would not grant access onto the Parkway for purposes of construction vehicles. He stated that came up in part of the church's discussion in the use of Lucia Lane. Mr. Rees stated that the church had been meeting for six months and in the discussion of the use of Lucia Lane, the church was advised that it could not use Lucia Lane because of its inavailability to use the Parkway for construction traffic. Mr. Rees stated that it was only then that the problem began to surface and it was determined that some decision had to be reached.

Mr. Rees stated that the Zoning Administrator some time ago had cited the contractor for violation of condition no. 11 which was the distrubance of the 25 ft. buffer zone and for using Prices Lane for construction access and the use of the 25 ft. buffer for construction vehicles. During that controversy, the church made inquiry to the United State Park Service and received a response from Mr. John Burn, the Superintendent of the Park Service. Mr. Hyland inquired if that response was different from what the BZA had received already. Mr. Rees stated that he was not certain whether it was included in the application or not. Essentially, the letter indicated that the parkway was not available for construction access and under no conditions would they grant a permit. Mr. Rees stated that only left the contractor with two alternatives for access to the property, Vernon View Drive and Prices Lane. With regard to Vernon View Drive, the church then made inquiry to the VDH&T as to whether it was an acceptable alternative for the construction traffic. They received a letter from Mr. Halterman of VDH&T which raised two problems with the use of Vernon View Drive. The first

184

objection was to the sight distance on Vernon View Drive. Mr. Rees stated that it had been true that during the public hearing for the use of the facility, Vernon View Drive had been discussed. It had been the opinion of VDH&T that the sight distance on Vernon View Drive as it presently existed was insufficient. It would require major reconstruction of Vernon View Drive and, particularly the lowering of a hump between the property and the parkway in order to obtain the sight distance for acess for ingress and egress. Mr. Rees stated that the sight distance was not adequate then and was not adequate now.

The second objection raised by Mr. Halterman was with respect to removal of numerous trees in the area. There was a row of Canadian Pines lining Vernon View Drive which were very mature and very neatly placed. Mr. Rees stated that they formed a beautiful buffer. In order to put a construction road in, they would have to remove the trees as there was no other way to get in off of Vernon View Drive. Mr. Rees stated that that would be a serious mistake in view of the fact that it would be a temporary access road. It would not be a permanent road. At the termination of construction, the road would be closed off and there would not be any further access in or out of that roadway. Mr. Rees stated that it was senseless to destroy some mature, long standing trees which formed a beautiful buffer simply because they needed access into the property. Mr. Rees stated that the church could do that without approval of the BZA as it would not impact on the Prices Lane buffer in condition no. 11. The church had chosen not to do that in order to preserve the trees and the foliage and the landscaping on Vernon View Drive.

Mr. Rees stated that the other alternative for access to the property was off of Prices Lane. Mr. Rees informed the Board that there were disturbances already approved to that area by the County site plan. All of the utilities coming off of Prices Lane had easements across the 25 ft. buffer zone. Mr. Rees stated that the construction entrance that was presently in place used part of the sewer easement plus an additional few feet. It was carefully placed there by the contractor with minimal disturbance. Mr. Rees stated that the contractor had taken great pains when cutting through that section not to disturb a holly tree of good size that was next to the roadway. Mr. Rees stated that the contractor had been very careful in what he had removed. The electrical and water easements had been installed with a minimal amount of disturbance to the landscape. Mr. Rees stated that the gas easement had not yet been installed. Mr. Rees stated that the landscaping along Prices Lane was very much inferior to Vernon View's landscaping. It did not have the long standing, mature trees that lined Vernon View Drive.

Mr. Rees explained to the Board that the construction access was purposedly placed across from an existing crossroads and was not across from any homes in the area or any driveways. This was to minimize the impact of the construction traffic going in and out. Mr. Rees stated that there was a minimal impact both in visual disturbance and actual disturbance in the construction roadway of the neighbors surrounding that property. He stated that there were more than adequate sight distances. He had read the staff report and visited the site and as best as he could determine, there was more than adequate sight distance in both directions. Mr. Rees informed the Board that there was some question about sight distance between the construction access and Vernon View Drive. Mr. Rees suggested that issue might have been raised at the time of heavy foliage. At the present time, there was adequate sight distance. Mr. Rees stated that he had called Mr. Halterman of VDH&T but was unable to talk to him to determine the basis for his concern. Mr. Rees stated that it had been indicated that by trimming the trees, the problem could be corrected very easily.

Mr. Rees showed the Board a slide presentation of the roadways and the construction access along with the mature trees that lined Vernon View Drive. Mr. Rees informed the Board that the church was asking for a construction access not to exceed eighteen months. He stated that he had reviewed the recommendations of the staff contained in the memo dated October 23, 1981 and had no problem with those conditions which they had agreed to in a meeting with the County Executive. Mr. Rees stated that with respect to the addendum dated October 27, 1981, he had no problem with the 11A portion of it. However, with regard to 11B, there were two provisions that he raised a question on only because of an impossibility to comply at the present time. He questioned the statement, "Said construction entrance shall be used by construction equipment only and shall not be used by automobiles and vehicles of construction workers which can access the site via Lucia Lane with approval of the National Park Service." Mr. Rees stated that at a meeting with Supervisor Duckworth and the County Executive, it had been agreed by the church that that would take place. Presently, there was a problem with the church doing so. Mr. Rees stated that there were really two problems. First, the church had not yet cleared the legal difficulties with the National Park Service in order to have the right of access over Lucia Lane. Mr. Rees explained that he expected that to be accomplished within the next thirty days but he was awaiting an approval of an agreement with one of the adjoining land owners which was being reviewed by their attorney. The other problem was that all of the utilities had not yet been constructed. The gas company had not installed the gas service. Until that was accomplished, the contractor could not pave over the parking area and the roadway in off of Lucia Lane. Mr. Rees stated that until those two things were accomplished, he could not have the church agree to that provision simply because they could not comply with it at the present time. He explained that the access road off of Lucia Lane was not paved. It was excavated but not paved. Paving would go in after the utilities were completed.

185

Mr. Rees was also concerned about the statement, "There shall be no vehicles of any kind parked on Prices Lane or the other residential streets in the vicinity of the temporary entrance." Mr. Rees stated that he saw no reason for that provision as there was no way to control it as it was a public street. However, Mr. Rees stated that the church had agreed to park all of the construction traffic on-site on the church site. Mr. Rees stated that the church would agree to a requirement that all construction workers park off the street on site. Mr. Rees stated that the contractor would also agree.

Mr. Rees requested the BZA to resolve the matter as there had been endless meetings with the Park Service, the County Executive, the BZA and the citizens. Mr. Rees stated that the church needed a resolution as they needed access to the site and did not want to have any more violations taken against the contractor because of the use of it. Mr. Rees restated his position that he did not believe the Special Permit prohibited the construction access. But he stated that the church was in conflict with the Zoning Administrator and the issue needed to be resolved by clarifying what the provisions were in conditions no. 11 and 12. Mr. Rees stated that the church did not believe that Vernon View Drive was appropriate and neither did the staff. Even VDH&T had not recommended access from Vernon View Drive. Mr. Rees stated that only left the one logical location which was the use of Prices Lane. He stated that the church had chosen the least objectionable point of access on Prices Lane which was right across from the adjoining street.

Mr. Hyland inquired as to when the construction entrance was opened up. Mr. Rees replied that it had been the first part of September or late August. He stated that it had been subsequent to his informal appearance before the Board. It was upon the advice of the BZA that the church had proceeded with the special permit application for the construction access.

Mr. Phil MacNansion of 8428 Salkey Court informed the Board that he had lived in the area for 16 years. He stated that his residence was a mile from the church site. He stated that he had driven the street off of Prices Lane onto Linton Lane many, many times. He informed the Board that there was very little traffic on the street. Having access to it for construction would not in any way cause a problem for such a short period of time. He was in support of the church's proposal.

The following persons spoke in opposition. Mr. Steve Mitchell, an attorney located at 320 King Street in Alexandria represented the Stratford-on-the-Potomac citizens association and two individual property owners involving the pending litigation before the Circuit Court concerning the original decision of the BZA. Mr. Mitchell expressed two important concerns of the citizens. Mr. Mitchell stated that this was not an application asking to do something. Instead, it was an application to ratify actions already taken. Mr. Mitchell stated that if the Board granted the request, it would be rewarding an applicant for taking the law into its own hands. There was no dispute that before you could put a construction road in, you needed a permit from VDH&T. Mr. Mitchell stated that the construction road was bulldozed through on the 3rd of August before there was a construction permit from VDH&T. He stated that the permit from VDH&T was only obtained after a fuss and ruckus by the neighbors. He stated that the applicant was only before the BZA tonight because of the ruckus raised by the neighborhood.

Mr. Mitchell informed the Board that there had been theme all throughout the previous hearings in the citizens opposition. One theme was the protection of the neighborhood itself, particularly Prices Lane. The other theme was the preservation of the George Washington Parkway. Mr. Mitchell stated that the BZA had made an effort to protect th neighborhood by not allowing access onto the property through Prices Lane. The applicant had the choice of Lucia Lane or Vernon View Drive and decided to use Lucia Lane. Now the applicant was requesting permission to run heavy equipment trucks up and down Prices Lane for 18 months. Mr. Mitchell stated that one of the primary problems was the continuing concern over access to this site. The letter from the Park Service made it clear that ultimate access into the site was not yet a certainty. Mr. Mitchell stated that the citizens were concerned about the church coming back at a later date with regard to a service entrance. Mr. Mitchell was concerned that the construction access would establish a toe-hold on Prices Lane for a future service drive, particularly if the Park Service proved obstinate.

Mr. Mitchell informed the BZA that the staff report did not indicate that construction of an access on Vernon View Drive was an impossibility. He stated that in the original file, there was a scribbled comment on one of the letters from Mr. Yates dated March 31st indicating that there was a site off of Vernon View Drive on which there could be access onto the church property. Mr. Mitchell believed that the concern over the trees was legitimate but should not be the determining issue. He stated that equal consideration should be given to the protection of the residential neighborhood. He informed the Board that it should not consider money in the determination either. He stated that it was considerably cheaper for the church to come in as proposed off of Prices Lane. Mr. Mitchell stated that the citizens were still interested in the preservation of the residential neighborhood. At the original hearing, there had been testimony about handicapped children playing along the street which did not seem to be a concern of the applicant. Mr. Mitchell stated that the applicant was only concerned about money and efficiency but had shown no concern for the neighborhood. He stated that the church had bulldozed their way in.

186

Chairman Smith informed Mr. Mitchell that he had given every consideration to the church using Vernon View Drive. However, after careful analysis, it was very evident that Vernon View Drive would afford greater impact in every area that the BZA had to concern itself with. He stated that the BZA had to consider traffic, the hazardous entrance, and a greater impact on the traffic. Chairman Smith stated that he was sure there was some disruption to two or three families. Mr. Mitchell responded that it was more than two or three families. Chairman Smith stated that there were hundreds of automobiles that used Vernon View Drive everyday. He stated that to have the access at that location was not a safe thing for the BZA to do. Mr. Mitchell stated that he was not convinced that it could not be done safely. He stated that it might require additional measures but it was not impossible. Chairman Smith stated that it would disrupt the flow of traffic on Vernon View Drive and would not disrupt the flow of traffic at the present location. Chairman Smith stated that the BZA had to concern itself with the least impact as possible. According to the staff and the VDH&T, Prices Lane seemed to be the area that afforded less impact. Mr. Mitchell stated that might be true but the staff members did not live along Prices Lane. He suggested that the staff members hear from the residents. Chairman Smith stated that the BZA intended to hear from the residents.

The next speaker in opposition was Paul Donovan of 1906 Prices Lane. He was President of the Stratford-on-the-Potomac citizens association. Mr. Donovan stated that the citizens association was immediately adjacent to the construction site. Mr. Donovan stated that there had been some misunderstanding about the motives of the association in opposing the construction of the church adjacent to the community. Mr. Donovan stated that neither the citizens association nor any member of the association were opposed to the church. The opposition was from what they feared regarding noise and lights in the church parking lot which was to be constructed adjacent to the southern edge of Prices Lane. Mr. Donovan stated that the use of the street by construction vehicles had made that fear a reality. In addition, the association believed that the construction of one new institution along the Parkway would set a precedent for other construction and change the character of the Parkway.

Mr. Donovan stated that at the original hearing the BZA had shown its concern for the citizens fear by denying the use of community streets as access roads to the church parking lot and by adding terms to the special permit that vehicles should leave the church site via the parkway. Mr. Donovan stated that the terms had been violated by the church's contractor beginning on August 3rd and continuing until the hearing. Mr. Donovan stated that the association realized that the construction work was temporary and would end in the next year, but the disregard of the conditions and the unwillingness of the County officials to enforce the terms of the permit were cause for serious concern. Mr. Donovan stated that the concern was amplified by the lack of agreement between the church and the National Park Service for use of the parkway access. Mr. Donovan inquired that if an agreement had not been reached in 1½ years since the permit was granted, when would one be concluded.

Mr. Donovan stated that despite the special permit condition which stated that no trees or grading in any manner shall be performed within 25 ft. of Prices Lane right-of-way, on August 3rd, grading was performed and trees were removed well within the 25 ft. Prices Lane southern right-of-way. It was removed for an access road to the church and had been used for construction purposes. Heavy equipment vehicles were using Prices Lane at all hours of the day and night causing damage to property, a threat to safety and a general disturbance to the otherwise quiet neighborhood. Mr. Donovan presented a film to the Board showing the construction access.

Mr. Donovan stated that Fairfax County had issued citations for violations of the special permit conditions and for deviations in the approved site plan. Mr. Donovan stated that the citizens had brought the deviations to the attention of the senior County officials but they were unwilling to enforce the conditions of the special permit. Mr. Donovan stated that the residents were angry. They were concerned that if the construction of the church could be carried out in violation of the terms laid down by the BZA then the lack of enforcement would lead to long term non-compliance with the requirement to use the Parkway. Mr. Donovan stated that the concern was reenforced by the fact that 1½ years after the granting of the special permit, the parkway authorities had not yet acquiesced to the use of the access strip from the parkway.Mr. Donovan stated that the BZA had to act as its own enforcement agency. The association recommended that the special permit be revoked until access to the church's parking lot via the parkway was assured.

Chairman Smith stated that in all fairness to the County officials who had worked diligently on the issue, he stated that this was a democracy. Things take time and everyone has to be given an opportunity to be heard. Chairman Smith stated that the BZA was not able to get back to this application any earlier than it did and he apologized to the citizens for that fact. Chairman Smith assured the citizens that the County Executive had all the officials in the County trying to resolve the problem. He stated that it was a matter of grave concern but that it took time. Chairman Smith stated that the decision not to go to court on this matter was a decision well made. He stated that to have gone to court would have meant the loss of the battle. He stated that there might not have been any of the conditions allowed that now exist with regard to the entrance. Chairman Smith stated that it was felt to allow the application and the hearing would safeguard the conditions established by the Board at the original hearing. He stated that the BZA could not deny access for construction purposes to anybody. Chairman Smith stated that the BZA was not aware that the church could not use the National Parkway at the time of the granting or they would have addressed it at that time. Chairman Smith stated that it was a normal procedure in all site plans to allow

187

the disruption of buffers for sewer and utility easements. Chairman Smith stated that it had not been addressed at the original hearing for that reason. Chairman Smith apologized for the oversight of the Board but he stated that the BZA was not aware that the sewer and all of the utilities would come from Prices Lane. Chairman Smith informed the citizens that there had been a lot of time spent by County officials in connection with the application.

Mr. Donovan stated that the citizens did owe the Board thanks for the way in which it addressed the last hearing and tried to protect the citizens in the area from the continued access to the parking lot via the community street. Mr. Donovan stated that it was the concern of the citizens that if the parkway did not allow access, the Board would be faced with a fully constructed church and no way to get to it. Then the issues of Vernon View Drive and Prices Lane would be opened up again. Mr. Donovan stated that he would like to have that settled early. Chairman Smith stated that at this point, it was not an issue before the Board. The church had indicated that it would have access and were constructing with the understanding dictated by the Special Permit with regard to the entrance.

For the purposes of review, Mr. Donovan introduced his letter to the Board dated September 12th and his letter to Supervisor Duckworth dated August 11th. Chairman Smith accepted the letters for the record.

The next speaker in opposition was Mr. Al Judd of 1914 Prices Lane. Mr. Judd informed the Chairman that he had made a good point of stating that truck access onto Vernon View Drive could be hazardous. Mr. Judd asked the Board to recollect the films shown which showed a truck taking a right on Prices Lane to Vernon View Drive, the very drive not 45 ft. from the entrance that the citizens were asking to be cut into. Mr. Judd stated that it was hard for him to understand. He stated that if someone would just drive down Prices Lane from the construction site, there was the same line of trees and the same visibility to the left. He stated that it was ridiculous if you looked at it from the practical point of view. Mr. Judd stated that he wanted to clear up that matter since the Chairman had raised it. Chairman Smith stated that this was an established intersection and people were aware of it. Chairman Smith stated that it was also at the crest of a hill. Mr. Judd suggested that the Board members drive it themselves in order to see his logic for themselves. Chairman Smith stated that he assumed that the State Highway Dept. had made the intersection as safe as possible.

Mr. Judd read the Board a brief letter sharing some of his experiences. He stated that on the first Saturday in August, a dozer drove up, unloaded, and broke through the 25 ft. buffer zone. On Monday, Mr. Judd went over to the property and informed the superintendent of the BZA's ruling on the 25 ft. buffer area. Mr. Judd stated that he was told there was a building to build and the superintendent was putting in a construction entrance. From that time to the present, equipment deliveries at 3:30 A.M. with banging on vehicles lasting over a half hour had occurred. Mr. Judd stated that he finally had to call the police. He stated that it was the first time he had ever had to do that since moving to the property. Mr. Judd stated that the officer showed up and told the driver to leave. Another time at 3:00 A.M., a telephone line was torn down or ripped off of the house of Mr. Swann scaring his family in the middle of the night. Mr. Judd stated that no apology had been given to the Swanns for the incident. Mr. Judd stated that at 11:00 P.M., deliveries were made to the property. A neighbor had to argue to the driver about the noise and disturbance going on with the unloading of the heavy equipment. Mr. Judd informed the Board that he was only citing a few of the incidents. Mr. Judd stated that a blanket of dirt covered the homes in the construction area. He admitted that it was a dry season but there were steps to be taken care to eliminate that, although costly. Chairman Smith inquired if it was reported to Public Works and Mr. Judd stated that the neighbors had made the biggest pests out of themselves since the construction started. He stated that it was like beating on deaf ears. Mr. Judd stated that cars were illegally parked all around the curves of the intersection. Mr. Shea had to call the police. The same officer who showed up at 3:30 in the morning investigated the complaint and issued a ticket to one of the construction workers. Mr. Judd stated that the reason for the ticket was because two ladies trying to negotiate the curve almost ran into each other and they called the police. Mr. Judd stated that the workers were all using the driveway at the present time.

Mr. Judd stated that his reasons for pointing these issues out to the Board was to show a complete lack of responsibility and sensitivity on the part of the agents representing the owners. Mr. Judd stated that the illegal construction entrance as it existed was a thorn in the side of the neighborhood. He took issue with the reports offered by Mr. Yates that they only show which of the two entrances was best for the contractor, not for the neighbors. Mr. Judd inquired as to how the cost to the contractor could be compared to the repair of Prices Lane that the State would have to make. Mr. Judd stated that it was already cracking up from the heavy trucks on it. Mr. Judd stated that it was small road.

Mr. Judd inquired as to how the safety factor was equated to Vernon View Drive with the pick-up of school children at a three way road intersection of traffic. He stated that how could the County equate any knowledge of safety with the school pickup and children walking, etc. Mr. Judd stated that everyone was so concerned about the trees after 100 year old Oaks and others were cut. He stated that more would have been cut if the citizens had not contacted the County. Mr. Judd stated that he was glad to see Mr. Rees' film of the insignificant shrub wooded area he had shown to the BZA with the Cedars, Oaks & Maples all along Prices Lane not including the ones already removed from the corner. Mr. Judd stated that two large

188

trees had been bulldozed over. Mr. Judd thanked the Board for its original ruling and consideration for people in the neighborhood. He stated that the 25 ft. buffer had kept the noise factor lower and screened a large amount of dirt. He felt that the Board had an opportunity at this hearing to start everyone on the road to fellowship. He requested the Board to deny the request for a construction entrance on Prices Lane which would relieve the Board of two future unanswered questions. One was a service entrance and the second was a permanent entrance if needed since the parkway had not been approved yet. Mr. Judd asked the Board to let its decision be the beginning of a healing relationship and not one of continued misunderstanding.

The next speaker in opposition was Mr. James Swann of 1910 Prices Lane. He stated that he wanted to protect his neighborhood as he had lived there for 30 years. Mr. Swann stated that he had nothing against the Mormons or their church. Mr. Swann stated that Mr. Rees had spoken of Vernon View Drive being a dangerous access to construction. Mr. Swann stated that the law was that they would have to go 50 ft. south of Prices Lane toward the Parkway. He informed the Board that this would be the crest of the hill for the service entrance. From that location, it was possible to see 500 ft. north and completely down to the Parkway. Mr. Swann stated that it would be possible to see any car making a turn. He stated that cars coming from the other direction would have a chance to stop if they were doing the speed limit. Mr. Swann stated that the argument of Vernon View being dangerous did not make sense to him but he stated that he was not an engineer.

Mr. Swann stated that when the church first broke through the buffer, he called the State Engineer who informed him that the church did not have a permit. Mr. Swann stated that he talked to the engineer and was informed that Vernon View was a road constructed for heavy traffic such as trucks, etc. Prices Lane was not. Mr. Swann stated that when he first bought his property, Prices Lane was his private road. It did not have the foundation for heavy equipment and was cracking up. Mr. Swann stated that it could not take the heavy construction traffic. Mr. Swann inquired as to who would have to repair the road after the winter freeze and thaw.

Mr. Swann stated another problem was drainage. He stated that he and Mr. Donovan took the whole drainage for the whole neighborhood. Mr. Swann stated that a conduit had been placed under the road at Vernon View which brought the rest of the drainage onto them. He stated that if it kept up, his house would wash away. Mr. Swann stated that he was going to stop the drain because the state and county did not have an access for drainage through his property. Mr. Swann stated that he was concerned about the future drainage problems with the church's parking lot. Mr. Swann stated that the parking lot was slanted towards his property. He inquired as to why the drainage could not go toward the river.

The next speaker in opposition was Mr. B. R. Eggeman of 2102 Prices Lane. He stated that he lived five doors from the construction site. Mr. Eggeman stated that everyone in that area was appreciative of the 25 ft. buffer zone that the BZA had provided. He stated that they had considered it to be an inviolable buffer. He stated that conditions no. 11 & 12 of the special permit made it abundantly clear that the zone was not to be breached. Mr. Eggeman stated that it was breached some 12 weeks ago on the 3rd of August when the construction entrance was put through the zone and had been in daily use for three months. Mr. Eggeman stated that there had been citations issued for the violations but they had not been enforced. The church was requesting the BZA to amend the special permit to make the entrance lawful. Mr. Eggeman stated that it was entirely out of sequence as it was the permittee's responsibility and duty to come to the BZA for a hearing before the fact and not after the fact.

Mr. Eggeman stated that in the rush to contract, there was a pattern of act first and clarify later. He stated that the construction access was cut into the state maintained road four days before a permit was obtained from VDH&T. The pre-construction notification and conference with County inspectors was not held until the third day after construction started. Mr. Eggeman stated that was required by the site plan. Just recently, the BZA clarification was sought to permit the five utility lines. Pending the clarification, three of the five lines were installed. Mr. Eggeman stated that he understood from the staff report that the parkway entrance work was accomplished before an installation parkway was obtained. Mr. Eggeman stated that the premature construction access was a big example of the church's actions. He stated that the other examples were minor. However, he stated that the method of operating should not be rewarded.

Mr. Eggeman stated that eighteen months previously when the BZA granted the special permit, there had been an entrance option from Vernon View or Lucia Lane. The applicant chose Lucia Lane as his option by the parkway. Eighteen months later and three months after construction had started, the Lucia Lane entrance was still not available for either passenger cars or construction vehicles. Mr. Eggeman stated that it might not ever be available for service vehicles. Mr. Eggeman stated that this meant for the long and short term, another entrance was necessary on another street. The applicant was now requesting that Prices Lane be included an option for the short term for construction purposes. The staff recommended to approve the request and to extend the use of the construction entrance on Prices Lane for eighteen months. Mr. Eggeman stated that this was entirely unacceptable as Prices Lane should not even be under consideration. It was considered and excluded by BZA action eighteen months ago. Mr. Eggeman stated that the staff recommendation was unacceptable because temporary

189

uses tend to become permanent with time. Secondly, it rewarded the applicant for violation of the site plan by giving additional usage of the Prices Lane. Third, it removed the applicant's incentive for reaching an early agreement for the use of Lucia Lane. Fourth, it postponed the problem of future service vehicle use.

Mr. Eggeman informed the Board that it was time to return to the Vernon View option. He stated that it could be used for the short term temporary use as well as the long term permanent entrance. He stated that the option of Vernon View Drive had been present all along. The administrator of VDH&T had stated all along that he would approve a permanent entrance on Vernon View 45 ft. from Prices Lane. Mr. Eggeman submitted the correspondence from VDH&T for the record. Mr. Eggeman stated that the issue for VDH&T seemed to turn on whether it was to be a temporary or permanent entrance. Mr. Eggeman stated that Vernon View Drive was well suited for a permanent entrance as it was a collector street and an extension of Fort Hunt Road. It was intended to handle traffic of 2,000 vehicles a day. There was a bus route on Vernon View to Alexandria and the District. It was a snow removal route. Mr. Eggeman stated that it provided access in the same way for many nearby churches. Mr. Eggeman stated that an entrance could be made to Vernon View with just as much safety as there was at the junction with Prices Lane. Mr. Eggeman stated that the hedge on Vernon View Drive was doomed. He stated that if Vernon View and Fort Hunt were ever widened to four lanes, the hedge would be removed anyway.

Mr. Eggeman stated that construction trips could be planned and flagmen could be provided for times of usage. He asked that Vernon View be designated as both the temporary construction entrance and the permanent secondary entrance for service use. He asked that the unauthorized entrance on Prices Lane be closed and replanted immediately.

The next speaker in opposition was Mrs. Mary Jane Orr who stated that she was neither a resident of Stratford Landing or Prices Lane. However, she was a resident of the Mt. Vernon District and had been a part of the hearings and had watched the situation from the very beginning. Mrs. Orr stated that the Chairman had spoken of a democracy. She informed him that she was disappointed when 12,000 of the people in the Mt. Vernon District in three separate bodies voted not to have the church on the parkway to begin with. Mrs. Orr stated that the people were concerned about the opening up of the parkway for institutional use. She stated that there had been a constant fight both with the contractor and the citizens. She inquired as to how many other problems were going to arise because of the church. Mrs. Orr stated that the problems were not solved before construction was allowed to start. As a private citizen, Mrs. Orr stated that she could not imagine starting to build something without having all her ducks in a row before starting. She stated that to allow the construction to continue was beyond the average layman's comprehension.

Mrs. Orr stated that at the beginning of the hearing, two alternatives had been given. She stated that there was a third alternative. Time was a factor to Mr. Rees as he stated that the church had to go on with construction. Mrs. Orr stated that she did not see why there wasn't the third alternative to stop construction as it was now before it got so big that no one could do anything about it. She urged the Board to stop construction until all the problems were resolved including the park service environmental impact statement. Mrs. Orr was concerned that the area would be stuck with a large church and no way to get to it.

The next speaker in opposition was Mr. Cleve Laird of 2004 Prices Lane. He stated that he resided two houses down from the construction entrance. He added his thanks to the Board and the County officials for the interest they had taken in this matter. He stated that his biggest concern was that as a citizen that he not be swept away because something was bigger than he was or because there was not time to consider his feelings or do things right. Mr. Laird stated that if the Park Service had the right to say no then he should have the right to say no that the church could not use Prices Lane either. Mr. Laird informed the Board that they were his appeal and the people who represented his rights. He asked the BZA to take a serious look at the entrance off of Vernon View. He stated that Chairman Smith had indicated that traffic would be a problem on Vernon View but he stated that the traffic was going there presently.

Mr. Laird stated that initially when considering the church construction, people had decided that an entrance to Vernon View was the most appropriate for all concerned. He stated that it was possible to remove the knoll off of Vernon View and to put the entrance down a ways from Prices Lane to insure that people could get in and out without any problems. Mr. Laird stated that it was not too late to consider that kind of a move if it was necessary. Mr. Laird asked the BZA to insist that the people living on Prices Lane be granted the protection they had been given initially and that construction be stopped now and resolved now before there were any more problems. Mr. Laird stated that he did not want to be overwhelmed by something bigger than himself as it was not fair.

During rebuttal, Mr. Rees stated that he wanted to clarify one issue and then reserve rebuttal for the reconvening of the hearing on the 3rd of November. Chairman Smith stated that Mr. Rees could rebutt the testimony heard tonight and then rebutt any new testimony on November 3rd. He stated that the BZA might have questions at the continuation hearing.

190

Mr. Rees stated that there had been a lot of comments about unrelated issues but he stated that he would clarify it with regard to Lucia Lane for access into the property. Mr. Rees stated that he had an opinion and had it for some time from the solicitor of the Interior Department with regards to the rights of the church to use Lucia Lane for access. Mr. Rees stated that there was no question about the right to use Lucia Lane. The only question pending at the present time which the church was trying to resolve by agreement was the widening of the road consistent with the requirement of the site plan engineers at the County level. He stated that they required in approval of the site plan, a 21 ft. roadway into the church property. Lucia Lane was presently 15 ft. In order to widen the lane, approval must be obtained from the Park Service. Mr. Rees stated that the church was in the process of obtaining the agreement required from the surrounding land owners that had access to Lucia Lane. Once the agreements were secured, which was expected in thirty days, the problem would be resolved. Mr. Rees stated that he letters from the solicitor assuring the church that they had legal access onto Lucia Lane.

Mr. Rees stated that the issue had been raised several times but it was not really an issue. There was merely a great deal of misunderstanding which was why he wanted to clarify it for all of the citizens. Mr. Rees stated that the church had also been accused of having sinister motives in being before the BZA tonight. Mr. Rees stated that the church only had one interest and that was to gain a construction access onto the property. He stated that there was no intent now or anytime in the future to ask the BZA to open up Prices Lane for access to the property. Mr. Rees stated that the church did not intend that as it had been resolved eighteen months ago. The original site plan called for two entrances off of Prices Lane. There had been a great deal of citizen opposition and many of the citizens were upset over that proposal. The church in negotiating a resolution of that had agreed to use Lucia Lane. Mr. Rees stated that Lucia Lane was a far inferior alternative to the use of Prices Lane as access but the church had agreed to that and would continue to agree to that. Mr. Rees stated that there was no sinister motive or ulterior motive in the hearing tonight. Mr. Rees stated that the church only wanted a construction access for a period not to exceed eighteen months. At the conclusion of eighteen months, the construction entrance would be closed off forever.

Mr. Rees stated that there had been concern over the use of Lucia Lane for commercial vehicles. He stated that the only commercial vehicle the church would ever have need of was trash removal. Mr. Rees stated that he had discussed the matter with the Superintendent of the Parkway. He stated that he had not applied for access to the parkway for trash removal as the church had not needed it up to now. Mr. Rees stated that he had discussed it with the superintendent who forsaw no problem with it if Lucia Lane was the only legal access onto the property. Mr. Rees stated that based on the Board's decision, Lucia Lane was the only legal access onto the property.

Mr. Rees stated that another factor referred to at the hearing was the safety in using Vernon View Drive. Mr. Rees stated that the traffic counts on Vernon View Drive across the property were from 1937 vehicles to 1995 vehicles. Further up Vernon View, the figures rose to 2157 and higher. Mr. Rees stated that the only other street in the area that carried that significant amount of traffic was Stratford Lane. On the other hand, Prices Lane had a traffic count of 184 cars across the back of the construction site. Mr. Rees stated that Vernon View Drive carried at least ten times and in many cases twenty times more traffic than the majority of the surrounding streets in the area. Mr. Rees stated that it would cause the problem on Vernon View to be even worse if the church constructed a construction entrance with insufficient sight distance. Even with flagmen to make it safe as possible, there was still the question of construction traffic on a very heavily travelled road which was ten to twenty times more travelled than any other road in the area. Mr. Rees suggested that from a safety standpoint, the 184 cars using Prices Lane gave the church a much safer access in and out of the property for purposes of construction. At the conclusion of the construction, there would not be any further entrance and it would be landscaped over. Mr. Rees stated that there would not be a roadway there and the church would not ask for one.

Mr. Rees stated that there was some concern that the church did not have a concern for the neighborhood. He assured the BZA that the very reason the church agreed to use Lucia Lane was because of the citizen concern and the inability to reach a resolution on Prices Lane. The church agreed to an unacceptable alternative and would live with it. Mr. Rees stated that the alternative was acceptable at the present time. They were not asking for any change in that condition.

Mr. Rees stated that if the property were used for residential construction, nobody would be before the BZA for a special permit. Nobody would be asking the BZA for any special agreements. Yet the amount of construction traffic would be far heavier than was currently on Prices Lane. The buffer on Prices Lane would be non-existent because there would not be an agreement. It would simply be a construction project with twenty to twenty-five houses going into the project with all of the attendant construction traffic. Mr. Rees stated that the church construction would be over in a period of twelve months. The church had asked for eighteen months in the event there was any problem with the construction. The construction contract was a 360 day contract beginning around the first part of August. It was expected to end around the first part of August 1982.

191

Mr. Rees stated that Mr. Thomas, the contractor, had been in business for a long, long time. He had been raised in the Mt. Vernon area and had very strong feelings about Mt. Vernon. Mr. Rees stated that Mr. Thomas had done an outstanding construction job in keeping the site clean and making it look presentable and doing as much as he could to prevent significant impact to the surrounding area. Mr. Rees stated that they had inspectors from the Zoning Office on the site twice a day. The allegations that there were significant violations were not true. He stated that everything had been closely inspected throughout the period of construction up to the present time. With all of the concern from the County offices, there had been additional inspections that normally do not take place.

Mr. Rees stated that the church was before the Board because it needed a resolution as it needed a construction easement. Again, Mr. Rees stated that he believed the BZA had given the church that access originally in granting the special permit. He stated that they had the right to use the building for church purposes. The Board did not limit the right to enter the property for construction purposes. However, he stated that there was some disagreement to that which they needed cleared up so that everyone knew what right the church has to enter onto the property and what right the contractor has.

Mr. Rees suggested that the present entrance was the most acceptable alternative and the only logical alternative. Using Vernon View meant for a short period of time to impact the safety of the surrounding neighbors and to impact the neighborhood with the construction phase. Mr. Rees stated that it would cut off the street for the period of construction which did not make a lot of sense.

Mr. Hyland inquired about the alleged damage to Prices Lane that was occuring because of the construction vehicles. He asked the position of the church. Mr. Rees stated that it was his understanding that the contractor was obligated to repair whatever damage occurred. Mr. Hyland inquired as to whom he was obligated and whether it was a contractual obligation. Mr. Rees stated that he believed it was required by the County by the bonding. Mr. Rees stated that the staff report indicated a bond was required by the contractor to repair the damage to the road, if any.

Mr. Hyland moved that the Board defer the hearing until November 3, 1981 at 1:30 P.M. for decision and for additional testimony if required by Mr. Yaremchuk or Mr. DiGiulian. Mrs. Day seconded the motion and it passed by a vote of 3 to 0 (Mr. Yaremchuk and Mr. DiGiulian being absent).

//

Page 191, October 27, 1981, Recess

At 11:30 P.M., the Board recessed for ten minutes and reconvened at 11:40 P.M. to continue with the scheduled agenda.

//

Page 191, October 27, 1981, Scheduled case of

8:55 P.M. · JOHN W. & DOROTHY P. MOFFETT, appl. under Sect. 18-401 of the Ord. to allow construction of deck additions to dwelling to 11.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 9114 Home Guard Dr., The Oaks at Signal Hill Subd., 78-2((16))456, Annandale Dist., R-3(C), 9,197 sq. ft., V-81-A-178. (DEFERRED FROM OCTOBER 21, 1981 FOR ADDITIONAL INFORMATION & FOR DECISION OF FULL BOARD.)

Chairman Smith informed the applicants that there still was not a full Board present. He stated that he did not believe that Mr. Hyland had had an opportunity to review the case yet. Mr. Hyland responded that he had listened to the tapes and reviewed the file. Mr. Moffett asked to be allowed to present some additional testimony. Chairman Smith stated that the Board would accept any additional written testimony. However, at the time of deferral, the applicant would be allowed to give additional oral testimony as the absent Board members would be able to hear it. Mr. Moffett stated that he did not control his whereabouts. He stated that he had some difficulty in staying over after the recess. Mr. Moffett advised the Board that he was unsure as to what his schedule reflected. Mr. Hyland suggested that the Board receive the testimony but leave the record open.

Mr. Moffett informed the Board that his variance application was made to the minimum setback from the rear lot line in order to construct a deck and a hot tub at the rear of his property. He stated that the hardship he cited was the drainage. Mr. Moffett stated that his house was situated to the rear of the lot. His front yard was 3 to 4 times the distance of the rear yard. All of the neighbors storm water drained over his lot. Mr. Moffett stated that the contractor refused to come back and regrade his lot. Mr. Moffett stated that he had laid 45 ft. drainage pipes to save his plants. He stated that he would have had to do that whether the deck was constructed or not. Mr. Moffett stated that his rear yard was totally useless. If the house had been moved forward 10 to 20 ft., he would not have had a problem.

192

Mr. Moffett presented the Board with a copy of the drawing that was originally submitted for a building permit as it pointed out the area in which he was building. Mr. Moffett stated that whatever decision was made, he would call on the Board for the outcome of the case.

Chairman Smith informed the Board that this was an application for a 30 ft. deck with a hot tub. Mr. Hyland moved that the Board defer decision until November 3, 1981 for a full Board.

//

Page 192, October 27, 1981, Scheduled case of

9:00 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195. (DEFERRED FROM OCTOBER 21, 1981 FOR HEARING BY FULL BOARD.)

Mr. William Donelly, attorney at law, requested the Board to allow another deferral for a full Board. It was the consensus of the Board to defer the variance until November 3, 1981 at 2:00 P.M.

// There being no further business, the Board adjourned at 11:50 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on June 21, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: June 28, 1983
Date

193

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, November 3, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:25 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. RUSSELL S. BIEBER, appl. under Sect. 18-401 of the Ord. to allow construction of carport addition to dwelling to 4 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-412), located 7008 Capitol View Dr., Broyhill Langley Estates Subd., 21-4((13))140, Dranesville Dist., R-3, 14,110 sq. ft., V-81-D-145. (DEFERRED FROM SEPTEMBER 15, 1981 FOR NOTICES.)

Mr. Russell Bieber of 7008 Capitol View Drive in McLean informed the Board that he was in need of a carport to protect his vehicles. He stated that he was unable to construct a garage at the rear of the property due to a swale in the back of the lot which was a runoff area for the adjacent property. In addition, he stated that his property had a narrow front yard. Mr. Bieber informed the Board that his property was deep and narrow which was his justification for the granting of the variance request.

In response to questions from the Board, Mr. Bieber stated that the carport would be 25 ft. from the building closest to him. Mr. Hyland inquired if the house next door was of a similar structure as Mr. Bieber's. He was informed that it was a similar house. It had the bedrooms on the second floor and the family room and den were on the lower level. Mr. Bieber stated that it was a four level house. Mr. Hyland inquired about the type of screening provided and was informed there was a 4 ft. hedge. Mrs. Day inquired if the neighbors on lot 139 planned to build a carport on that side. Mr. Bieber responded that his neighbors had not indicated that to him. He stated that his neighbors were in Malaysia. Mrs. Day inquired if the neighbor had made any objection to the carport. Mr. Bieber stated that he had discussed the plans with his neighbor and there were not any objections.

There was no one else to speak in support of the application and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-D-145 by RUSSELL S. BIEBER under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 4 ft. from side lot line (7 ft. minimum side yard required by Sects. 3-307 & 2-412) on property located at 7008 Capitol View Drive, tax map reference 21-4((13))140, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 14,110 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being narrow and has exceptional topographic problems.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

194

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 194, November 3, 1981, Scheduled case of

10:15 A.M. FOSTER J. RAPP, appl. under Sect. 18-406 of the Ord. to allow partially-built barn for sheltering horse to be completed and to remain located 21.4 ft. from side lot line (40 ft. min. distance from side lot line req. by Sect. 10-105), located 10603 Creamcup La., Woodfield Subd., 7-3((1))4, Dranesville Dist., R-E, 2.0 ac., V-81-D-154. (DEFERRED FROM SEPTEMBER 22, 1981 FOR NOTICES).

Mr. Foster J. Rapp of 10603 Crecamcup Lane was questioned by the Chairman as to why he had not obtained a building permit prior to construction. Mr. Rapp stated that he was constructing a barn. Chairman Smith stated that Section 18-406 of the Ordinance required a building permit prior to construction in order for the BZA to act on the variance as a mistake. Mr. Rapp stated that his property was very flat. He informed the Board that he had picked out an area with a slope in order to allow for drainage around the barn. Chairman Smith informed Mr. Rapp that he had applied for a variance under the mistake section and would have to come up with the reasons why the mistake had occurred. He inquired if Mr. Rapp had read the section of the Ordinance pertaining to the mistake sections. Mr. Rapp stated that he was familiar with the requirements under the Ordinance.

Mr. Rapp stated that he had chosen this location for the barn because of the drainage. He stated that any other location on his property would not have allowed the proper drainage. Mr. Hyland inquired as to the justification for the application and how the mistake had occurred. Mr. Rapp stated that the mistake was the distance from the neighbor's property. Mr. Hyland inquired if Mr. Rapp was aware of the setback from the neighbor's property line and he responded that he had not been aware of it. Mr. Hyland inquired if Mr. Rapp had made any inquiries to determine that. Mr. Rapp stated that was part of his trouble. He stated that he had only been concerned about the proper drainage around the barn and keeping the shelter low. Mr. Hyland inquired if Mr. Rapp had made any inquiries at all about setbacks and was informed he had not. Mr. Hyland inquired if there had been any inquiries at all about constructing a building on the property and was informed there was not. Mr. Hyland inquired as to who had constructed the barn and was informed Mr. Rapp had constructed it. Mr. Hyland inquired if Mr. Rapp understood that there were restrictions and was informed he had not known.

Mr. Hyland inquired if there were any other structures in his neighborhood as close to the property lines as the barn. Mr. Rapp responded that he felt there were some but he had not measured them. Mr. Rapp stated that he liked a different type of structure. Some of the structures were closer than his but he did know the addresses of the properties. He stated that they were temporary types of barns.

Mrs. Day inquired as to what was located on the lot next to the barn and whether they had any septic in the field. Mr. Rapp stated that they did not. He stated that the ground sloped from their property to his. Mr. Hyland inquired as to what was situated to the east of the property and was informed there were five acres of open field. Mr. Rapp stated that his barn was on the west side. Mr. Hyland inquired as to what was on that side and was informed there was a five acre lot with a house on it. Mr. Hyland inquired as to the distance of the house and was informed it was a minimum of 200 ft. and probably more like 300 ft.

Chairman Smith called for speakers in support of the application. Mrs. Ann Cado spoke in favor. She stated that she resided on Springvale Road. Ms. Cado informed the Board that her barn was right next to the fence. It was constructed prior to her purchasing the property. Chairman Smith inquired as to when it was constructed but Ms. Cado stated that she did not know. In response to questions from the Board, Ms. Cado stated that her barn was constructed as little as 40 ft.

Mr. Rapp informed the Board that there was a letter from Mr. Gallegan who was quite aware of the barn. He stated that Mr. Gallegan's wife was supportive until she later stated that she could not support it. Chairman Smith stated that there were two letters of opposition which would be placed in the file. Mr. Yaremchuk inquired if Mr. Rapp had obtained a building permit and was informed he had stopped construction at that point. Mr. Rapp informed the Board that he had not done anything more for six months or so. Chairman Smith again stated that one of the requirements of the mistake section was that a building permit be obtained prior to construction. Mr. Yaremchuk agreed with the Chairman. Mr. Yaremchuk stated that he felt the BZA should deny the request. However, the barn was 90% completed and the area was full of barns. He inquired as to who long Mr. Rapp had resided in Fairfax County and was informed 20 years. Mr. Yaremchuk inquired if Mr. Rapp was familiar with the

Page 195, November 3, 1981
FOSTER J. RAPP
(continued)

Zoning Ordinance and where he worked. Mr. Rapp responded that he worked for IBM. Mr. Yaremchuk stated that he felt to make Mr. Rapp tear down the barn would be a problem.

195

RESOLUTION

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. V-81-D-154 by FOSTER J. RAPP under Section 18-406 of the Fairfax County Zoning Ordinance to allow a partially-built barn for sheltering horse to be completed and to remain located 21.4 ft. from side lot line (40 ft. minimum distance from side lot line required by Sect. 10-105), on property located at 10603 Creamcup Lane, tax map reference 7-3((1))4, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 1981; and

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

THAT non-compliance was the fault of the applicant.

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

THAT the granting of this variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. DiGiulian seconded the motion.

The motion *FAILED by a vote of 2 to 3 (Messrs. Smith, Hyland and Mrs. Day).

Mr. Covington inquired as to the time frame for the removal of the barn and was informed by the Chairman that the applicant had thirty (30) days to remove it. Any problem with that should be brought back to the BZA.

//

Page 195, November 3, 1981, Scheduled case of

10:30 A.M. RICHARD GUTMANN, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport to 10 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 3405 Surrey Lane, Holmes Run Acres, 60-1((2))2, Providence Dist., R-3, 14,260 sq. ft., V-81-P-155. (DEFERRED FROM SEPTEMBER 22, 1981 FOR NOTICES).

Mrs. Helen Gutmann of 3405 Surrey Lane informed the Board that she and her husband wanted to enclose their carport into a porch. In response to questions from the Chairman, Mrs. Gutmann indicated that she was familiar with Section 18-401 of the Ordinance. Mrs. Gutmann stated that her hardship was justified as she had notified all of the neighbors. One of the reasons for the enclosure was because the carport was on the north and east side of the house. She felt that it would make the house a little warmer. It would enable them to have a dry sitting place from snow, wind and rain. Mr. Hyland stated that from looking at the pictures submitted, there appeared to be a fence of some sort. Mrs. Gutmann responded that there was a screened fence about 6½ ft. tall on the property line. Mr. Hyland inquired as to what was to the right of the fence. Mrs. Gutmann stated that there was landscaping on the neighbor's side. The neighbor's house was situated about 15 ft. from the line or possibly even 20 ft. In response to further questions from the Board, Mrs. Gutmann stated that there were a great many carports in her area. She informed the Board that there was a letter of suppprt from one of her neighbors. Mrs. Gutmann stated that most of the neighbors had upgraded their houses and many had enclosed their carports. Mr. Hyland inquired as to what the enclosure would be used for and was informed it would be a porch.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-P-155 by RICHARD GUTMANN under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 10 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307), on property located at 3405 Surrey Lane, tax map reference 60-1((2))2, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

196

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 14,260 sq. ft.
4. That the applicant's property is exceptionally irregular in shape having converging lot lines and that the applicant has provided photographs which show that on the common property line to the right of the structure, there is existing screening and that the closest building on the asjoining property is about 15 to 20 ft. from the property line.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 196, November 3, 1981, Scheduled case of

10:45 A.M. BARBARA B. SHUMWAY, appl. under Sect. 3-303 of the Ord. to permit nursery school and child care center, located 6900 Elm St., Goodwin's Addition to Beverly Manor Subd., 30-2((5))3, Dranesville Dist., R-3, 10,390 sq. ft., S-81-D-065.

&

10:45 A.M. BARBARA B. SHUMWAY, appl. under Sect. 18-401 of the Ord. to allow nursery school and child care center on a lot which has area of 10,390 sq. ft., width of 76.41 ft. and which includes a detached garage located 1.66 ft. from a side lot line (10,500 sq. ft. min. lot area & 80 ft. min. lot width req. by Sect. 3-306; 12 ft. min. side yard req. by Sects. 3-307 & 10-105), located 6900 Elm St., Goodwin's Addition to Beverly Manor, 30-2((5))3, Dranesville Dist., R-3, 10,390 sq. ft., V-81-D-193.

Mrs. Barbara Shumway of 1342 MacBeth Street in McLean informed the Board that she wished to make use of the property as a nursery school. She stated that there was a need for child care centers in McLean. The purpose of her child care center would be to provide a home like environment. She stated that she would offer both educational opportunitites as well as the care and affection for the children. Mrs. Shumway stated that children spend long hours in a day care center and a home like environment was what was necessary for them rather than being in a institutional environment. Mrs. Shumway stated that she was requesting a capacity of 30 children which was approved by the State. However, she stated that she anticipated having between 15 and 20 children at any one time. The hours of operation would be between 8 A.M. and 6 P.M. Mrs. Shumway stated that she had children who had pre-registered. The schedule would bring them in between 8:45 A.M. and 9:15 A.M. They would leave between 4:00 P.M. and 5:00 P.M. Children coming from other schools would carport or would have transportation provided for them. Mrs. Shumway stated that the trips to the center would be few.

197

Mrs. Shumway stated that the children would be arriving at staggered hours because the parents went to work at different hours. Mrs. Shumway stated that there should not be more than one car arriving at any given time.

Mrs. Shumway stated that the schedule for the children was contained in Attachment A of the handout she had presented to the Board at the beginning of the hearing. The children would be involved in their activities, snack time and lunch time so that the day would go very quickly. There was a minimal amount of time spent outdoors.

Prior to the purchase of the property, Mrs. Shumway stated that she spoke with her neighbors and described her plans. Attachment B contained signatures of the neighbors who were supportive of the application. Mrs. Shumway stated that two of her abutting neighbors were very enthusiastic about the center. Mrs. Shumway stated that this was the ideal location as it would allow her to take advantage of the library, community center and the park. Mrs. Shumway stated that there was a need for child care because of the changing economy. Mrs. Shumway informed the Board that the Office for Children only offered child care in two of the County schools, Kent Gardens and Lewinsville. She stated that children that would be in their program and her program would be the kindergarten children. However, the schools only took children on a fulltime five day a week basis so that any mothers who only worked three days a week did not have place to take their children. Mrs. Shumway stated that the Office for Children had done a survey on September 22nd and received a response from 2,400 families that indicated that they needed child care.

Mrs. Shumway stated that there were many schools in the area that did not have the facilities for after school care. Mrs. LaBelle, the principal at Chesterbrook, felt that the parents deserved a choice. Mrs. Shumway stated that there was a need for a licensed child care center in the McLean area and she wished to fill that need.

Together with the special permit application for the child care center was a variance application on the lot size and bulk regulations. Mrs. Shumway informed the Board that the property was a substandard lot. It was 110 ft. short of the minimum lot area and was 6 ft. short of the minimum lot width. Mrs. Shumway stated that was the way the lot was and would not be changed by her operation of the child care center. Mrs. Shumway stated that the variance would not have any affect on the neighborhood since the lot had existed that way for some time.

With respect to the garage, she informed the Board that the garage was not part of the school operation. The garage had always been located on the property. Mrs. Shumway stated that the 110 ft. lacking from the minimum lot area was not significant. There would not be any adverse affect on the neighborhood by the granting of the variance. The lot would be in the same condition it has always been in. However, she stated that if the BZA wished her to tear down the garage, whe would do so.

Mrs. Shumway explained her reasons for choosing this site. One reason was that the center needed access on the roads normally travelled by the parents. The site had access to the park and the library. Mrs. Shumway stated that she needed a home atmosphere rather than a steriel institutional building. She stated that the floor plan was excellent. Mrs. Shumway stated that the property had all the qualities she desired and was on the fringe of the neighborhood. She stated that the neighbors would not even know she was there. Elm Street provided direct access to the library and the community center. Any traffic to the center would blend in.

Mrs. Shumway informed the Board that the property had had team inspections. The State Welfare Department had approved the facility. The Health Department had approved the facility. She stated that the Environmental Policy Division was asked to comment and the comments were contained in the staff report. Mrs. Shumway stated that after reading the comments, she got in touch with Mr. Douglas who came out to measure the noise level. She stated that the noise level was half as much as they had determined. Mr. Hyland presented Mrs. Shumway with the addendum to the staff report. Mrs. Shumway stated that even if the noise were to double, it would still be well within the range allowed.

Chairman Smith inquired if Mrs. Shumway would be living on the premises and was informed she would not be at the present time. She stated that one of the teachers would be living there. Chairman Smith stated that the applicant had purchased the property solely for this use. Mrs. Shumway stated that she had been looking for some time. The contract was dated July 7th. Mrs. Shumway stated that she had a contingency and had settled on the property at the end of August. She stated that she had done everything she could.

Mr. Hyland stated that the staff had recommended a 6 ft. high fence to shield the play area from the noise. Mrs. Shumway stated that it was already shown on the plat. She stated that she had started to put up part of the fence and it would be completed prior to the State approving her license. Mrs. Day inquired as to the location of the nearest child care center. She was informed it was over a mile away in a medical center. Mrs. Shumway informed the Board that she had a two year old son and was familiar with the child care centers in McLean. They did not offer the kind of program that she wanted. Chairman Smith inquired if Mrs.

198

Shumway had ever operated a child care center. Mrs. Shumway stated that she had operated a nursery center in Ecuador.

Chairman Smith informed the Board that someone was coming to the meeting in connection with this special permit as there was something else that had come up just that morning. Chairman Smith stated that Mrs. Shumway would be allowed to rebutt any comments. Chairman Smith stated that he understood that there was a prohibition in the Comprehensive Plan against Special Permits in this Central Business District in McLean. Mr. DiGiulian stated that he wanted to see that prohibition in writing. Mr. Yaremchuk inquired if it was in the Ordinance as that was the only thing the BZA dealt with. Mr. Hyland inquired of Mrs. Kelsey as to how this happened to come up at the last minute. Mrs. Kelsey responded that they had not received a letter from the Land Use Office. When she asked them to check, it was determined that this was one of the areas that a Special Permit was not allowed. She stated that Mr. Doggett was coming down to explain it to the BZA.

Chairman Smith asked for speakers in support of the application. Mrs. Roy Swindle of 1422 Dolley Madison Blvd. informed the Board that her property was right next door to Mrs. Shumway. She stated that she would be about 100 ft. from the child care center. She stated that she was looking forward to having them as neighbors and wanted to have children in the area again. Mrs. Swindle mentioned to the Board that the property on the other side of the child care center was heavily wooded. There was a lot of undergrowth and vegetation that would keep the noise level down. She stated that had not been mentioned previously. Mrs. Swindle stated that several neighbors had asked her to speak on their behalf. Mrs. Buckman and the Scherrazins were very enthusiastic about the child care center. Mrs. Swindle informed the Board that she was a teacher and was most impressed with the approach to the upbringing of the children. She stated that the center would be a good addition in every way and would help the field of childhood education.

There was no one else to speak in support. Mr. Ken Doggett of the Land Use Office of Comprehensive Planning apologized to the Board for his tardiness in replying to the application. He stated that he had been court for two weeks. Mr. Doggett informed the Board that the language in the McLean Central Business District referred to Special Permits on the recommendation E of the Comprehensive Plan. Although it said that special permit should be considered in terms of their design configuration as much as anything, the last sentence of the recommendation said that special permits should be allowed only along the following streets: Engleside Avenue, Old Dominion Drive, Chain Bridge Road, the west side of Emerson Avenue between Lowell Avenue and Chain Bridge Road. Mr. Yaremchuk stated that the Comprehensive Plan was only a guide and was not adopted in any Ordinance. Mr. Doggett agreed that it was purely a guide. Mr. Yaremchuk inquired as to the reasoning for only allowing Special Permits on some streets and not others. Mr. Doggett stated that certain streets that took a lot of traffic were considered. The McLean area wanted to retain it as residential and they thought it might make an area go commercial at any moment. Mr. Yaremchuk inquired if the school was commercial. Mr. Doggett stated that he did not know the functions of the school. Mr. Yaremchuk inquired if this school was a good transitional use between Dolley Madison and the residential area. He stated that there should be a good transitional use rather than commercial from a planning point of view. Mr. Doggett responded that he would rather not answer that question but he stated that he understood the argument.

Mr. Yaremchuk stated that the BZA needed some professional guidance. He inquired as to what type of use Mr. Doggett would prescribe for that strip of land. Mr. Doggett stated that he would have to write a report. Mr. Yaremchuk inquired if the school was a higher use density than townhouses. Mr. Doggett responded that it was different because of parking and lighting, etc. Mr. Hyland inquired as to what the area was planned for at the present time and was informed it was townhouse offices. Mr. Hyland stated that directly across the street from Mrs. Shumway's property was a commercial area. He inquired of Mr. Doggett, that if Mrs. Shumway was located there would not be a problem. Mr. Doggett stated that was correct. Mr. Hyland inquired as to what was across the street as far as development. Mr. Doggett responded that he did not remember. Mr. Hyland stated that he realized Mr. Doggett was called to the meeting at the last minute. Mr. Doggett informed the Board that normally his office handled the comments on time. He stated that he was the only Planner for Area II and had been involved in a study on the Rt. 50/66 Task Force.

The next speaker in opposition was Pat McCormack of 6908 Elm Street who had concerns in two areas. She stated that she was a mother and had raised her children in child care centers. Mrs. McCormack stated that she was a former teacher and a former planner. This property was close to the George Washington Parkway. She stated that the house where children would be dropped off was an extremely busy area. A child could get killed. Mrs. McCormack stated that this was not a home for small children. Mrs. McCormack stated that she had two small dogs and was nervous that they might get out into the street. Mrs. McCormack stated that she was concerned about the 30 children who might go walking into the street. She advised the Board that this was not a deadend street. Mrs. McCormack was concerned about the impact of the noise on the children. If the children were there for long periods of time, she wondered what impact the noise would have on the children. Mrs. McCormack stated that she lived next door to Mrs. Keesling. Mrs. McCormack stated that she was not in her home during the busiest part of the day. She was concerned about the change in the neighborhood. She was also concerned about backing out into the street. She was concerned about downtown McLean.

199

Mrs. McCormack was concerned that business had come to her neighborhood. Mrs. McCormack stated that the only thing that separated her neighborhood from McLean was Rt. 123. She was concerned that if the center were approved, there would be signs erected. In addition, she stated that the increased traffic in front of her house would be disruptive. Mrs. McCormack informed the Board that there was no way to limit a permit for 30 children. She stated that this property was not safe for children. Mrs. McCormack stated that she had not written a letter of opposition but had called Mrs. Shumway to express her opposition. Mr. Shumway was concerned about the staggered hours and carpools. She was afraid that the center would be run by someone other than Mrs. Shumway.

As a resident in the neighborhood, Mrs. McCormack stated that she hoped the BZA would stand firm and block the spillage of any commercial enterprise into her residential neighborhood. She stated that there were more appropriate places than a tiny house on a busy street.

During rebuttal, Mrs. Shumway stated that she was not certain that a personal opinion as to whether the house was small or whether she would operate the center correctly was germane. As she had mentioned earlier in testimony, she had parents who had pre-registered their children. The parents had seen the house and seen the physical plans and did not have any objections. Mrs. Shumway stated that she was a parent herself and her son would be one of the children. She stated that she would be there as the children knew her. With regard to the fence, the Health Department only required a 3½ ft. fence. However, she planned to put up a 6 ft. stockade fence. There would be a double entrance so that the children would not be able to get to the exterior gate. Mrs. Shumway stated that she set the rules and would regulate them or the children would not be allowed to attend. She stated that the parents escorted the children inside the center. Mrs. Shumway stated that the noise was not noticed and she did not understand why it was an issue. Mrs. Shumway stated that the Health Department had approved the plans. There was not any commentary about the noise. The State Welfare Department was very strict and very difficult and were working with Mrs. Shumway. She stated that they did not object to the facility or the location of it or the size of the property. Mrs. Shumway stated that the house had adequate space for 41 children but she was only asking for 30 children and only expected to keep 20 children. In addition, there was four times as much playground space as required.

Mrs. Shumway informed the Board that she was a school and an educator. This was not a business. She stated that she should have brought something in showing the profits. Mrs. Shumway stated that she was not asking for much as the Director of the school. It was projected in the $30,000 to $40,000 range. One of the big interests was that she also had a son that she wanted a good environment for and it would be provided in this facility. Mrs. Shumway stated that the special permit would be given to her and not to anyone else. No one else would operate the facility.

Mrs. Shumway stated that she had investigated Special Permits before she purchased the property. However, there was no way of knowing everything. Mrs. Shumway stated that there were a lot of nice children in McLean who would need her care.

Mr. Hyland stated that Mrs. Shumway had indicated that she had contacted the office of a member of the Board of Supervisors for that district before purchasing the property. Mrs. Shumway stated that she had contacted Leta Dail of Supervisor Falck's Office. Mr. Hyland inquired if Ms. Dail had posed any problems to her and was informed there were none whatsoever. Mr. Hyland inquired if Mrs. Shumway had received support from the Supervisor's Office. Mrs. Shumway stated that she was informed it was an area left to the BZA for a judgement and was not an area in which the Supervisor felt she needed to be involved in. Mrs. Shumway stated that she had inquired as to whether the citizens had called in. Mrs. Shumway informed the Board that Mrs. Swindle had expressed support of two of the neighbors as well as herself. Chairman Smith stated that it was all a part of the record.

Chairman Smith inquired if Mr. Doggett had any questions. Mr. Yaremchuk stated that if Mr. Doggett was allowed to speak that Mrs. Shumway should be given a chance to respond. Mr. Doggett stated that the subject property was in the Central Business District Sign area and was not in the planned Central Business District. Technically, there was no reference to this particular area nor to Dolley Madison. Mr. Yaremchuk stated that he understood that the area was not in the Master Plan. Mr. Hyland stated that the area was up for grabs.

Chairman Smith closed the public hearing on both the variance and special permit applications. He informed the Board that this was a similar request for at least one or two requests that had been previously denied by the BZA because of the variance.

Mrs. Day moved that the Board deny the special permit application. The motion failed for lack of a second. Mr. DiGiulian offered the following resolution instead.

R E S O L U T I O N

Mr. DiGiulian made the following motion:

RESOLUTION

200

WHEREAS, Application No. S-81-D-065 by BARBARA B. SHUMWAY under Section 3-303 of the Fairfax County Zoning Ordinance to permit nursery school and child care center, located at 6900 Elm Street, tax map reference 30-2((5))3, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 3, 1981; and

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

1. That the owner of the property is the applicant.
2. That the presnet zoning is R-3.
3. That the area of the lot is 10,390 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of children shall be 30.
8. The hours of operation shall be 8:00 A.M. to 6:00 P.M., five days a week.
9. This special permit is granted for a period of three (3) years with the Zoning Administrator empowered to grant three (3) one-year extensions.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 2 (Mr. Smith & Mrs. Day).

RESOLUTION

In Application No. V-81-D-193 by BARBARA B. SHUMWAY under Section 18-401 of the Zoning Ordinance to allow nursery school and child care center on a lot which has area of 10,390 sq. ft., width of 76.41 ft. and which includes a detached garage located 1.66 ft. from a side lot line (10,500 sq. ft. minimum lot area & 80 ft. minimum lot width required by Sect. 3-306; 12 ft. minimum side yard required by Sects. 3-307 & 10-105) on property located at 6900 Elm Street, tax map reference 30-2((5))3, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

201

RESOLUTION

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,390 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being narrow and has an unusual condition in that it is a substandard lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 2 (Mr. Smith & Mrs. Day).

Page 201, November 3, 1981, Scheduled case of

11:00 A.M. MOBIL OIL CORPORATION, appl. under Sect. 18-401 of the Ord. to allow construction of new service station bld. 1 ft. from rear lot line (20 ft. min. rear yard req. by Sect. 4-807), located 5863 Richmond Highway, 83-4((1))9, Mt. Vernon Dist., C-8, 0.45611 ac., V-81-V-147.

The Board was advised that the Special Exception pending before the Board of Supervisors in connection with this variance application had been deferred until November 16th. It was the consensus of the BZA to defer the variance application until November 24, 1981 at 11:45 A.M.

//

Page 201, November 3, 1981, Scheduled case of

11:10 A.M. DONALD M. & MARY L. SIMPSON, appl. under Sect. 18-406 of the Ord. to allow carport to remain 4.5 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-412), located 7902 Penn Pl., Hollin Hall Subd., 102-2((2))(17)30, Mt. Vernon Dist., R-3, 12.105 sq. ft., V-81-V-146.

Mr. Bernard Fagelson, an attorney at law with an office in Alexandria, represented the Simpsons. Chairman Smith inquired if a building permit had been issued on this structure. Mr. Fagelson responded that the carport was constructed 9 years ago without a building permit. Chairman Smith inquired if Mr. Simpson owned the property at the time and was informed he did. Mr. Fagelson informed the Board that this was a pie-shaped lot. He made note that the carport was built in error but he stated that it was a honest error. It was done without any knowledge that a carport required a permit and was built 9 years ago. Mr. Fagelson stated that the carport was constructed in good faith. He stated that the Simpsons had purchased the house and it had a very queer appearance as an addition had been placed on the house without the same kind of roofline. The addition had an A-roof making the house look like it was cut in the middle. The solution to the appearance of the house was to add a carport with a hip roof. Since the lot was pie-shape, there was lots of room at the rear portion but in the front, it encroached on the side lot line. Mr. Fagelson stated that his client was in ignorance that the carport was in violation for 9 years as there had not been any question about it. Mr. Fagelson stated that Mr. Simpson felt he had an excellent relationship with his neighbor. Only two neighbors were concerned about the carport. One was Mr. Dooley on lot 3 of 7913 Wellington Road at the rear of the property and Mrs. Hohein and her son on lot 31 next door. They felt that the matter should be called to the attention of the County after 9 years. For the record, Mr. Fagelson submitted a copy of a letter from Mr. Dooley stating that he did not have any objection to the carport.

202

Mr. Fagelson reported to the BZA that Mr. Simpson was not present. He had retired from the Fire Department with a heart condition. The strain and the worry over the carport affected him and he was unable to attend. Mr. Fagelson stated that he would have been much happier if he had gotten a building permit. However, he stated that if the BZA saw fit to grant the variance, Mr. Simpson would immediately apply for a building permit. Unfortunately, there was no way to ignore the fact that the carport was built without a permit. Mr. Fagelson stated that 9 years was a long time and surpassed any statute of limitations. Mr. Fagelson stated that the impact on the neighbors was minimal.

Mr. Hyland inquired as to who had constructed the carport and was informed that Mr. Simpson had hired a contractor to do it. Mr. Hyland inquired as to the name of the contractor but Mr. Fagelson did not know the answer. Mr. Hyland inquired if Mr. Simpson had wanted to appear before the BZA to give his testimony. He stated that he was very much interested in hearing from him. Mr. Fagelson stated that Mr. Simpson had a heart condition. He was fine until he was faced with the stress of making a presentation. Mr. Hyland stated that he would like very much to give the applicant the opportunity of appearing before the BZA. He stated that he would consider deferring the application since the applicant was ill in order to permit him to attend the hearing. Mr. Fagelson stated that the situation was sort of a Catch 22. Mr. Simpson wanted to come to the hearing but the stress of the situation caused him to have heart palpitations.

Chairman Smith stated that there was no building permit issued for this property. Mr. Fagelson stated that if the Board chose to grant the variance rather than have Mr. Simpson tear it down, the justification could be the shape of the lot. Mr. Fagelson stated that he understood the Board but the request was not unreasonable. Chairman Smith stated that the mistake section had to be through no fault of the applicant. If the applicant had come in prior to construction, the BZA might have granted a variance.

Mr. Hyland stated that he did not think that was the case. Someone else had constructed the carport. A contractor had constructed the carport. Mr. Hyland stated that it was a Catch 22. If the contractor had done what he should have done, Mr. Simpson would not have this problem. Mr. Hyland stated that he wanted the information on this case and wanted some clarification on it. He wanted to know why a building permit was not obtained and who built the carport.

Mr. Fagelson stated that it was his understanding that the work was sub-contracted. He stated that he could be in error but he was sure it was sub-contracted. He was certain that Mr. Simpson did want to appear but if he could not, he inquired if the Board would accept an affidavit under oath. Chairman Smith stated that he would like to have the contractor appear or have him named in the affidavit.

There was no one else to speak in support. Mr. Doug Hohein of 7904 Penn Place spoke in opposition. He suggested that the BZA deny the variance request. Mr. Hohein presented the Board with his written statement. Mr. Hohein explained to the Board that Mr. Simpson knew when he constructed the carport that it was too close to the property line. The reason for the silence over all these years was that he was led to believe that Mr. Simpson had gotten a variance. Mr. Hohein stated that Mr. Simpson knew the requirements of the Ordinance. The law back then was the same as now. Mr. Simpson had misled them and deceived them. Mr. Hohein informed the Board that the character of the carport had changed over the years. Mr. Simpson was forced to retire from Fire Services and as a home contractor. He was still not a well man. The carport was an open workshop and an auto repair garage and a sawmill operation. Mr. Hohein stated that his bedroom window was right next to the carport. Mr. Hohein stated that he and his mother were not unreasonably concerned about noise. When Mr. Simpson was a fireman, he was gone for two to three day shifts. As a result, there was only occasional noise. Since his heart attack, he devoted every waking hour building something. Mr. Hohein stated that such noise make it impossible for him to read, study, converse, relax or do anything in the rest of the house. He stated that he and his mother had become concerned about it. In the summer of 1980, Mr. Simpson built a boat out on the patio. This summer, he built kitchen cabinets for his summer home and his brother's summer home. Mr. Hohein stated that the problem was the noise from early in the spring until late autumn.

Mr. Hohein tried to explain the silence over the years. He stated that he got along with his neighbors. However, he had called the County because of further violations. Mr. Simpson was going to construct a 12 ft. garage workshop in early February. Once the County was called, Mr. Simpson quieted down a little bit. Mr. Hohein stated that it was just an intolerable situation. Mr. Hohein stated that even if Mr. Simpson restrained himself, the runoff ran over onto his land. He stated that his back yard and side yard would remain flooded.

For those reasons, Mr. Hohein and his mother opposed the variance request. He stated that he had no objection to the deferral but wished to be present at the next hearing.

The next speaker in opposition was Mrs. Hohein of 7904 Penn Place. She stated that her objections to the carport were the same as her son's. She stated that it was a very definite nuisance. She had believed Mr. Simpson when he had stated that he had gotten a building permit. Mrs. Simpson stated that she could not rest with all of the noise. When she had

203

company, she was unable to talk with them. Mrs. Hohein stated that she tried to get along with her neighbors but she resented the moisture from the carport as well as the noise. She felt the variance should be denied as she needed rest. She stated that Mr. Simpson was aware of the requirements as he was a licensed contractor with the County at the time. He had misled her.

During rebuttal, Mr. Fagelson stated that all of the testimony of Mrs. Hohein and her son were legitimate statements since they believed it. Mr. Fagelson stated that nothing had been said about the actual impact of the carport. It was a question of Mr. Simpson's power tools. Mr. Fagelson asked that the variance be deferred.

Mr. Hyland moved that the variance be deferred to allow the applicant to testify and if he could not, that the Board obtain an affidavit which addressed the question in the testimony as to who constructed the carport. If Mr. Simpson and/or a company with which he was affiliated was involved in the construction, why was a building permit not obtained. Mr. Hyland stated that he also wanted to know whether any representation was made to the neighbor about a building permit and/or a variance being granted from the BZA. Mr. Hyland stated that if the response was given in an affidavit, that a copy of it be given to Mr. and Mrs. Hohein, mother and son, so that they have an opportunity to react. Also, Mr. Hyland wanted to know if Mr. Simpson had ever been in the home improvement business and if so, during what time period. Mr. DiGiulian seconded the motion.

Chairman Smith inquired as to a date for the deferral but Mr. Fagelson stated that he would be guided by whatever was convenient for the BZA. It was the consensus of the Board to defer the variance until November 24, 1981 at 12:00 Noon for a presentation by the applicant or an affidavit. The Clerk was directed to send Mr. Fagelson a copy of the questions raised by Mr. Hyland.

//

Page 203, November 3, 1981, Scheduled case of

11:20 A.M. JAMES M. SILBERMAN, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 8.2 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 2110 Popkins Lane, Hollin Hills Subd., 93-3((4))82, Mt. Vernon Dist., R-2, 19,684 sq. ft., V-81-V-184.

Mr. Easton Cross of 2209 Glasco Road, an architect, represented Mr. Silberman who was in the hospital. Mr. Cross stated that the justification was basically that the house was not situated parallel to the street or to the lot lines so that the space required by the Ordinance was triangular. Mr. Cross stated that there was a 40 ft. fall from the street to the rear so that there was an elevation difficulty. Mr. Cross stated that he was a member of the Architectural Review Board that had approved the addition for Mr. Silberman. Mr. Cross informed the Board that he felt the three conditions under the Ordinance in which a variance could be granted had been met. Mr. Cross stated that only a corner of the addition extended into the side line setback. Mr. Silberman had outlined his proposal to the neighbors. They did not object to the addition

Mrs. Day inquired as to what the addition would be used for and was informed it would house therapeutic equipment. Mr. Cross stated that both Mr. and Mrs. Silberman were major art collectors and they needed space to house their art. The Silbermans had a musuem downstairs in their house. Mrs. Day inquired as to how much of the addition would be used for therapy and how much for art. Mr. Cross responded that half of the addition would be used for art and one-quarter for therapy. Half of the addition would be an extension of the master bedroom for a dressing room and exercise equipment. Mr. Cross stated that the museum space was going to be built into the crawl space. Mrs. Day inquired as to the type of equipment to be housed in the addition. Mr. Cross stated that there would be a sauna and a soaking tub. Mr. Cross stated that Mrs. Silberman was going through cancer therapy and has had a heart attack.

There was no one else to speak in support and no one to speak in opposition.

Page 203, November 3, 1981 Board of Zoning Appeals
JAMES M. SILBERMAN

R E S O L U T I O N

In Application No. V-81-V-184 by JAMES M. SILBERMAN under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 8.2 ft. from side lot line (15 ft. minimum side yard required by Sect. 3-207) on property located at 2110 Popkins Lane, tax map reference 93-3((4))82, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordan-e with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 19,684 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property which precludes building at the rear because of the steep slant. The proposed addition will be well screened and there is a very definite medical requirement for the addition.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 204, November 3, 1981, Scheduled case of

11:30 A.M. BARRY M. SHERBAL, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 10.6 ft. from side lot line (15 ft. min. side yard req. by Sects. 3-207 & 10-105), located 6518 Spring Valley Dr., Indian Spring Subd., 72-3((5))62, Annandale Dist., R-2, 24,069 sq. ft., V-81-A-185.

The Board deferred the variance application until January 5, 1982 at 10:00 A.M. in order to allow the applicant an opportunity to obtain certified plats of the property.

//

Page 204, November 3, 1981, Recess

At 12:45 P.M., the Board recessed for lunch and did not reconvene until 1:45 P.M. to continue with the scheduled agenda.

//

Page 204, November 3, 1981, Scheduled case of

11:40 A.M. ZOILA ACEVEDO, appl. under Sect. 18-401 of the Ord. to allow the keeping of a pony and a stable to house it, on a 1.0 acre lot (2 acre min. lot size for keeping of livestock and a stable for housing it req. by Sects. 2-512 & 10-105), located 2919 Hideaway Rd., Briarwood Farms Subd., 48-4((3))(39)3, Providence Dist., R-1, 1.000 ac., V-81-D-186.

Mr. James Tate, an attorney from Vienna, represented the applicant. He presented the Board with a letter for the record. Mr. Tate informed the Board that Mrs. Acevedo had verbal permission from all of her contiguous neighbors. Chairman Smith inquired as to how Mr. Tate could justify the request under Sect. 18-401 of the Ordinance. Mr. Tate stated that there were physical factors. The request was to approve a pony which was 12 hands from the shoulder to the tailbone. A horse was normally 15 to 16½ hands. Mr. Tate stated that they were asking for a pony. He informed the Board that there was a great deal of difference between a pony and a horse.

205

Mr. Tate stated that in view of the rural character of the area and the location of the property, the variance was justified. Chairman Smith inquired if the Zoning Administrator had ruled a pony to be the same as a horse. Mr. Tate responded that as far as he knew, the BZA had the full authority to grant the variance. Chairman Smith inquired as to what had brought the matter before the BZA. He inquired if the Zoning Administrator had ruled that the pony could not be kept. Mr. Tate stated that there was not a complaint against Mrs. Acevedo. Mr. Tate stated that he was not aware of any problems at all. This was merely a case of a citizen trying to do what was right. Chairman Smith inquired if Mrs. Acevedo had made an application to keep the pony prior to filing for a variance. Mr. Tate informed the Board that they could grant the variance as the Ordinance only spoke of horses. He stated that there was a difference between a horse and a pony. Chairman Smith inquired if the matter had been discussed with the Zoning Administrator and whether a ruling had been issued on it. Chairman Smith stated that he did not know whether there really was a case for a variance. There was not a violation notice. The applicant had not requested to be allowed to keep the pony. She had only requested the BZA to vary the section of the Ordinance. Chairman Smith stated that there was a question in his mind as to whether the BZA could grant the variance. Mr. Tates responded that the lots in this subdivision were not big enough to allow the pony. Chairman Smith replied that neither were 99% of the lots in the County. Mr. Tate stated that this was a rural area.

Mr. Hyland stated that Section 2-512 contained language which indicated that the BZA could grant a variance as far as the number of animals. By inference, the BZA would have the authority to consider such a variance. Chairman Smith stated that if the Ordinance allowed the animal to kept on a one acre lot he would have no problem with it. Chairman Smith stated that ponies were pones but they became horses. He informed Mr. Tate that he should have had a ruling before coming to the BZA. Mr. Hyland stated that he did not propose to know about horses but a pony was different from a horse. Mr. Hyland stated that if a horse was not allowed, was there a prohibition against ponies. That was why Mr. Tate was before the BZA. Chairman Smith stated that the Zoning Administrator should have ruled on the matter. The Zoning Administrator should have ruled whether the animal was a horse as defined by the Ordinance. Chairman Smith stated that there should have been a ruling as to whether or not Mrs. Acevedo could keep the pony and whether or not it was by definiation a horse or a prohibited animal. Mr. Tate asked the Chairman to examine the Ordinance and inform him under what rationale the Zoning Administrator could grant this. Chairman Smith stated that if the Ordinance did not prohibit this then why was the applicant before the Board. If it was not prohibited, the applicant did not need a variance. Mr. Tate stated that the Board could grant a variance.

Mr. Covington informed the BZA that Mrs. Acevedo had been advised that she could not keep a horse on one acre of ground. Chairman Smith inquired if this animal was a horse. He stated that the Zoning Administrator was the only one who resolve that issue. Mr. Tate stated that he would appreciate the Board hearing the variance. Mr. Yaremchuk stated that he appreciated the administrative remedy. After the Zoning Administrator's decision, the appeal was to the BZA and then to the courts. Mr. Yaremchuk moved that the BZA defer the application to give the applicant an opportunity to get a ruling from the Zoning Administrator. Mr. Hyland stated that the BZA should treat it as a horse.

Mr. Covington read Section 2-512, paragraph 1 of the Ordinance which stated that the keeping of livestock on any lot less than 2 acres in area was prohibited. Chairman Smith stated that what the applicant was actually requesting was to keep livestock on one acre of land. Mr. Yaremchuk stated his motion was to give the applicant an opportunity to get a determination from the Zoning Administrator as to whether he could or could not have whatever he wanted on the one acre. Then if he disagreed with the ruling, he could appeal that decision and state why the variance was correct. Mr. Yaremchuk stated that there were three letters from Supervisor Scott and the County Executive. The applicant was here to appeal the ruling.

Mr. Tate stated that he was not sure that the application was done in the proper way. Mr. Covington stated that he had read the section of the Ordinance which related to livestock. Chairman Smith stated that the Ordinance did not refer to any specific animal. He stated that this particular animal was in the category of livestock and that was the reason for the prohibition. Chairman Smith asked if Mr. Tate wanted to proceed with the hearing. Mr. Tate stated that he would not want to have to come forward when someone was forcing them to do it. He stated that the variance could be granted and he would rather the BZA granted the variance.

Chairman Smith stated that the applicant had to show some situation as to why this variance should be granted over and above the other landowners. Chairman Smith stated that this was a legislative matter and was not really a matter for a variance. He stated that was his judgement. This was a general situation that existed throughout the County. It was not something created by a definition of the Ordinance under the hardship section. Chairman Smith stated that the applicant had reasonable use of her land.

Mr. Hyland stated that he had just read the correspondence and in the last full paragraph of Mr. Lambert's letter to Supervisor Scott, he talked about whether the Zoning Ordinance should be amended to include ponies on less than two acres. When the discussion was started on this application, there was a question as to whether the applicant had any right to be before the BZA. Yet there was a letter stating that the applicant did have that right. The letter

206

basically stated that they did not recommend a change in the Ordinance. However, the applicant had the right to come before the BZA. Chairman Smith stated that the livestock section of the Ordinance prohibited the keeping any livestock on one acre. Mr. Hyland inquired as to the definition of livestock.

Chairman Smith inquired about the motion made by Mr. Yaremchuk. Mrs. Day seconded the motion. The vote on the motion to defer passed by a vote of 4 to 1 (Mr. Hyland). Chairman Smith stated that the section of the Ordinance discussed livestock and a pony was livestock. Mr. Yaremchuk stated that it was in the staff report. Chairman Smith stated that the applicant had to come up with some unusual situation for this particular lot that made this particular applicant different than anybody else.

Mr. Tate suggested that the Board allow him to withdraw the application from the docket. Mr. Yaremchuk moved that the applicant be allowed to withdraw without prejudice. Mr. DiGiulian seconded the motion. The motion passed by a vote of 4 to 1 (Mr. Smith).

//

Page 206, November 3, 1981, Scheduled case of

11:50 A.M. ANTHONY D. HARRIS, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 9.8 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 10718 Pine St., Fairfax Acres Subd., 47-3((17))130, Providence Dist., R-2, 22,000 sq. ft., V-81-P-189.

Mr. Harris of 10710 Pine Street informed the Board that the reason for the size of the proposed garage was because of the limited amount of storage space. He stated that his house did not have a basement. He stated that the only area there was was the area they lived in. Mr. Harris stated that he and his wife both worked. They had two cars. He stated that the garage would enable him to take care of the two cars. In addition, they had a four year old daughter.

There was no one to speak in support and no one to speak in opposition.

Page 206, November 3, 1981 Board ofZoning Appeals
ANTHONY D. HARRIS

R E S O L U T I O N

In Application No. V-81-P-189 by ANTHONY D. HARRIS under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 9.8 ft. from side lot line (15 ft. minimum side yard required by Sect. 3-207), on property located at 10718 Pine Street, tax map reference 47-3((17))130, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 22,000 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and that a variance would be necessary for construction on either side of the existing structure.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

R E S O L U T I O N

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

207

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 207, November 3, 1981, Scheduled case of

12:00 NOON — NORTH ARLINGTON DEVELOPMENT, N.V., INC., appl. under Sect. 3-803 of the Ord. to permit community deck tennis facility located 8509 & 8459 Old Courthouse Rd., 29-3((8))63 & 64, Centreville Dist., R-8, 3.35 ac., S-81-C-067.

Mr. John Ewing of 307 Maple Avenue in Vienna informed the Board that this facility would be used by the residents of the 27 units in the project. The hours would be daylight hours only. The tennis facility would not have lights, employees or attendants. There would not be any traffic generaged. No parking was required but there would be extra parking provided on the site.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-C-067 by NORTH ARLINGTON DEVELOPMENT N.V., INC. under Section 3-803 of the Fairfax County Zoning Ordinance to permit community deck tennis facility [illegible] located at 8509 & 9549 Old Courthouse Road, tax map reference 29-3((8))63 & 64, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 3, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-8.
3. That the area of the lot is 3.35 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.

208

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of persons using the facility at any one time shall be two.
8. The hours of operation shall be daylight hours only.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 5 to 0.

Page 208, November 3, 1981, Scheduled case of

12:10 P.M. WILLIAM E. CONRAD, JR. ET. UX., appl. under Sect. 18-401 of the Ord. to allow resubd. into 5 lots, 3 of which would have width of 10 ft. each (80 ft. min. lot width req. by Sect. 3-306), located 1474 Pathfinder La., West McLean Subd., 30-2((7))(8)30 & 35, Dranesville Dist., R-3, 86,008 sq. ft., V-81-D-187.

Mr. William Conrad of 1474 Pathfinder Lane informed the Board that his property was quite irregular in shape being narrow and quite long. It was originally developed into nine lots through a variance request. Now they were basically trying to resubdivide into five lots with good shape for building. Each lot would be in excess of the minimum lot area. Mr. Conrad stated that he did not enjoy reasonable use of the land without a variance.

Chairman Smith inquired about the variance that had expired earlier in the year. Mr. Conrad said there were various complications with the original variance and he was not able to get it through. Chairman Smith inquired if he had been a party to the first variance and was informed he had been. Chairman Smith inquired as to the hardship. Mr. Conrad responded that the hardship was that the property was quite narrow and deep.

Chairman Smith inquired if the Board had any questions. Mr. Hyland inquired if this variance was basically the same as the previous request with just a change in the amount of the variance. Mr. Covington responded that it was basically the same request as the original studies that were done.

There was no one else to speak in support. The following persons spoke in opposition. Mrs. Sabrina Medich of 1506 Pathfinder Lane informed the Board that she had purchased her home a year ago. She stated that when she was buying her house, she was attracted by the neighborhood which was very old with a lot of lovely trees. She stated that her house was in very poor condition as the family had eight children. There was a lot of work to be done on her house. Mrs. Medich stated that she chose to work on this house and had put in a lot of money and a lot of hard work. She stated that she was only two houses away from the subject property. The end of her driveway was only 10 ft. away from Mr. Conrad's driveway. Mrs. Medich stated that the subject property would be her front yard. Construction of five houses would obstruct her view of the neighborhood and add a lot of traffic. She stated that Pathfinder Lane was a very narrow lot and this area was very old. She asked the Board to deny the variance.

The next speaker in opposition was Mrs. Maryrose Patrone, mother of Sabrina Medich, co-owner of 1506 Pathfinder Lane. She informed the Board that when she and her daughter had purchased the house, it had sat empty for one year. They had looked long and hard for a city property in a country sitting. Mrs. Patrone stated that they had put a lot of time and energy into their house. The houses on the street were narrow. Mrs. Patrone stated that the notification letter indicated that this would be an improvement to her property. However, she stated that she did not feel that way. Mrs. Patrone stated that she was tempted to buy another piece of property in the area but could not buy the whole neighborhood to keep it this way.

Mrs. Day inquired as to the average sizes of the lots surrounding this property. Mrs. Patrone stated that her lot was a half acre and the lot next door was a half acre. She stated that there were some three and half acre lots in the subdivision.

During rebuttal, Mr. Conrad stated that there were two concerns of the opposition. One was the driveway. Mr. Conrad stated that the plat he had submitted showed a different address so that the driveway would not be used at all any more. It would be moved at least 100 ft. from the present driveway. Also, the opposition had mentioned that the average lot size was 17,000 sq. ft. which was conservative. Mrs. Day questioned the average lot size as the plat showed 31,000 sq. ft.; 11,000 sq. ft. and another lot a little over 1/3 acre. Mr. Yaremchuk stated that the Master Plan called for R-3 which conformed to the proposal. Mrs. Day stated that the applicant could have five lots on this property. Mr. Yaremchuk stated that the applicant was complying with the Master Plan.

RESOLUTION

In Application No. V-81-D-187 by WILLIAM E. CONRAD, JR. ET. UX under Section 18-401 of the Zoning Ordinance to allow resubdivision into 5 lots, 3 of which would have width of 10 ft. each (80 ft. minimum lot width required by Sect. 3-306), on property located at 1474 Pathfinder Lane, tax map reference 30-2((7))(8)30 & 35, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

209

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 86,008 sq. ft.
4. That the applicant is in conformance with the zoning in this area.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 209, November 3, 1981, Scheduled case of

12:20 P.M. ARTHUR & EVELYN METZGER, appl. under Sect. 18-401 of the Ord. to allow subd. into 3 lots, with proposed lots 502 and 503 each having width of 12.69 ft. & proposed lot 501 having width of 124.62 ft. (150 ft. min. lot width req. by Sect. 3-106), located 1358 Windy Hill Rd., James Magarity Subd., 30-1((9))8B & 30-1((1))7, Dranesville Dist., R-1, 3.123 acres, V-81-D-164. (DEFERRED FROM OCTOBER 6, 1981 FOR ERROR IN ADVERTISING).

Ms. JoAnna Hirst of Annandale informed the BZA that she wanted to build a home for herself and two other families. Ms. Hirst stated that lots 501 and 503 were presently owned by Dr. Metzger but were landlocked. The current access was through an easement. Ms. Hirst informed the Board that she was an urban planner and represented herself and Dr. Metzger. There was a farmhouse on lot 501. It was rustic and was listed in an historic building survey of Fairfax County. Lots 502 and 503 were also surrounded by 5 other dwellings which had tree cover. Ms. Hirst stated that the unusual shape of the property made it difficult to keep the subdivision in an conventional manner. Ms. Hirst stated that the lot she desired for construction of her dwelling was in the northeast corner of lot 502. She had been advised by Mr. Hendrickson that the minimum variance to seek was permission to create lots with less than 200 ft. and to build a shared driveway leading to lots 502 & 503. There would be a 24 ft. strip of land for the shared driveway. Lot 501 would have 124 ft. with a 12 ft. pipestem. Ms. Hirst informed the Board that the normal approach was to provide a 50 ft. right-of-way which would destroy trees. In addition, it could possibly destroy the farmhouse. Ms. Hirst stated that if the 50 ft. right-of-way was constructed, it would reduce the amount of land area and the lot width would be reduced. Lots 501 and 502 would become corner lots. Ms. Hirst explained to the Board that the construction of the road would be overkill for the needs of two new dwellings.

Mr. DiGiulian questioned Ms. Hirst about the parcel of land she had indicated was one lot. Mr. DiGiulian stated that it was more like two lots under the same ownership. Ms. Hirst stated that lots 502 and 503 were currently a 2.0 acre parcel owned by Dr. Metzger and partners and lot 501 was owned by Dr. Metzger.

There was no one else to speak in support and no one to speak in opposition. Ms. Hirst informed the Board that a neighbor, Mr. Knott, had been present earlier in the meeting but had to leave. He had wanted to express his support of the application.

RESOLUTION

210

In Application No. V-81-D-164 by ARTHUR & EVELYN METZGER under Section 18-401 of the Zoning Ordinance to allow subdivision into 3 lots, with proposed lots 502 and 503 each having width of 12.69 ft. & proposed lot 501 having width of 124.62 ft. (150 ft. minimum lot width required by Sect. 3-106), in property located at 1358 Windy Hill Road, tax map reference 30-1((9))8B & 30-1((1))7, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.123 acres.
4. That the applicant's property is exceptionally irregular in shape.

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

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

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

1. This approval is granted for the location indicated in the plats inclused with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remian valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 210, November 3, 1981, Scheduled case of

12:30 P.M. R. W. CLEMENT, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into 3 lots with proposed lot 3 having width of 12 ft. (150 ft. min. lot width req. by Sect. 3-106), located 11406 Chapel Rd., Chapel Brook Subd., 76-4((2))2A, Springfield Dist., R-1, 7.0 acres, V-81-S-165. (DEFERRED FROM OCTOBER 6, 1981 FOR DECISION ONLY).

Mr. Chip Paciulli presented the Board with a copy of the approved preliminary site plan showing what the subdivision would look like without the requested variance. Mr. Yaremchuk stated that the plat showed how irregular the lot lines would be if this was under site plan control. Chairman Smith inquired if Mr. Paciulli had worked out the ingress and egress with the citizens. Mr. Paciulli stated that he would consult with Mr. Clement and understood the concern.

Mr. Vince Pizzurro of 11401 Chapel Road informed the Board that the citizens' objections had been to the three driveways coming out on Chapel road. He stated that they would remove their objections if there was a center driveway going to the three driveways. Mr. Pizzurro wanted the driveway located in the center of the property.

Mr. Yaremchuk inquired of Mr. Paciulli if that condition would be acceptable by Mr. Clement. Mr. Paciulli responded that Mr. Clement had a right for three driveways. Mr. Yaremchuk stated that this was an area of a lot of concern. He stated that he wanted to see that the citizens got help in working it out.

It was the consensus of the Board to defer the decision for a period of one week. The matter was scheduled for November 10, 1981.

//

Page 211, November 3, 1981, Scheduled case of

1:00 P.M. REHEARING: MR. & MRS. LES POMEROY, appl. under Sect. 18-401 of the Ord. to allow construction of 21 ft. high detached garage with attic 4 ft. from the rear & side lot lines (21 ft. min. rear yard & 12 ft. min. side yard req. by Sects. 3-307 & 10-105), located 7009 Raleigh Rd., Broyhill Crest Subd., 60-4((2))270, Mason Dist., R-3, 10,500 sq. ft., V-81-M-105. (DEFERRED FROM OCTOBER 21, 1981 FOR ERROR IN NOTIFICATION).

211

Chairman Smith stated that this variance was being reheard as the BZA had rescinded its action to grant-in-part heard on July 28, 1981. Mr. Barydukus of 2103 N. Lincoln Street in Arlington represented Mr. & Mrs. Pomeroy. Mr. Barydukus informed the BZA that in July, it had granted the application in part and then rescinded its action in September. Mr. Barydukus presented the physical data to the BZA. He stated that the applicants were asking for a variance of 4 ft. to the side and rear setbacks. The total height of the building was stated in the staff report. Mr. Barydukus stated that the garage would be a 16.4 ft. building with an average height of 14 ft. around the building. The garage would be constructed of masonry and the brick would match the house. The roof would have the same slope as the existing dwelling. Mr. Barydukus informed the Board that the applicants' property was shallow and there was no other location on the lot that would allow placement of the garage. Unless the variance was granted, the applicants could not use the property.

There was no one else to speak in support. Mr. Kevin Kunze of 7012 Bradley Circle spoke in opposition. He informed the Board that his house and rear lot line adjoined the rear lot line of Mr. Pomeroy. Mr. Kunze presented the Board with a petition containing the signatures of 26 homeowners in the area. He stated that they had petitioned the Board regarding the Pomeroy property located at 7009 Raleigh Road and the BZA had rescinded its action. Mr. Kunze informed the Board that the neighbors opposed the variance as it could affect their property values.

Mr. Kunze stated that the Broyhill Crest Civic Association also opposed the variance. Based upon a brief discussion, it appeared that the variance would impact the neighborhood. Mr. Kunze informed the Board that the neighbors were opposed because this variance would set a precedent for the area. Only two variances had been granted previously in this area and they were both for side yards, not the rear yard. Both variances were for two car garages and not four car, two story garages. Mr. Kunze stated that the requested garage was to be 21 ft. high and 4 ft. from the side and rear on a ½ acre lot. Mr. Kunze stated that the house was too small for the structure. The neighbors believed that the garage would change the value of th; property and change the structure. The garage was proposed to be two stories high and would reduce the amount of open space. Mr. Kunze informed the Board that Mr. Pomeroy owned Quality Auto Body and the neighbors were concerned about the future use of the garage.

Mr. Hyland stated that it was only speculation about the future use of the garage. Mr. Kunze stated that with a structure as large as the one proposed, it was very probable. Mr. Kunze stated that the fact that the house was located 32 ft. from the street did not change the fact that a variance would be necessary even if the house was 35 ft. from the street. Mr. Kunze stated that the neighbors did not believe that this was a hardship. Mr. Kunze stated that the variance would affect him more than anyone else in the neighborhood. Therefore, he requested that it be denied.

Mr. Hyland inquired about concessions. Mr. Kunze stated that if the variance were denied, the neighbors would work out some compromise. Mr. Hyland inquired if the neighbors had talked to the applicant and what the result might have been. Mr. Kunze stated that the neighbors did not have any luck in discussing the matter. If the variance were denied, they could work out a compromise. Mr. Kunze informed the Board that the proposed garage was totally out of character for the area. Mr. DiGiulian informed Mr. Kunze that the ground area at the left hand corner of the property was about 8 ft. deep. The 21 ft. height of the garage would be 6 to 8 ft. in the ground at the rear of the lot. Mr. Kunze replied that even if the ground was basically flat, the variance would still be needed. Mr. Kunze stated that he questioned the average height of 14 ft.

Mrs. Day stated that she believed the garage would look like a lot of building on one lot. There was going to be exterior stairs. Mrs. Day stated that Mr. Pomeroy kept antique cars and she inquired if Mr. Pomeroy sold them. Mr. Kunze stated that she would have to ask Mr. Pomeroy.

The next speaker in opposition was Mr. Walter Cullen, a realtor, having been in the business for ten years. He informed the Board that he was associated with Broyhill Crest. He stated that he had marketed the property that Mr. Kunze owned and knew the nature of the homes and the value of the property in that area. He stated that a structure such as the one proposed would have a detrimental effect on adjacent property. He stated that his buyers would shie away from it. In addition, the garage would degrade other property.

Mr. Leonard of 7010 Bradley Circle also spoke in opposition. He was a civil engineer with the U.S. Army Corp of Engineers. Mr. Leonard and his wife owned lot 260 which was the property that bear the most impact if the variance were approved. Mr. Leonard stated that when Broyhill Crest was developed, the concept of the area was one of the reasons he purchased there. The variance would break down the concept. Mr. Leonard stated that the proposed variance would permit two structures on a lot zoned for one dwelling unit of 10,000 sq. ft.

212

The loss in area, as well as the other objections, were an extreme price to pay to benefit Mr. and Mrs. Pomeroy. Mr. Leonard stated that the construction of a one story two car garage would be in keeping with the character of the area. He stated that a four car two story garage just for restoration and housing of antique cars had a commercial potential which was not in keeping with the subdivision. He asked the BZA to keep in mind the danger of setting a precedent.

The next speaker in opposition was Mr. Richard Egan of 7009 Bradley Circle, a retired officer with the Air Force and a retired U. S. Diplomat and a retired lawyer. Mr. Egan stated that he had a difficult in seeing the property from the side of the ill but just as surely would be affected by the variance as anyone else. Mr. Egan stated that this area was one of Northern Virginia's finest and there would be no way to restore it if the BZA granted the variance. Mr. Egan stated that the granting of the variance would set a precedent for a land use of this size. This was a multiple story structure for a four car garage with usable attic space. He stated that it would be a favor to the petitioners if the BZA denied the variance. The granting of the variance would affect the neighbors, change the character and affect property values. Mr. Egan stated that the proposed structure was too large for the lot. He asked that Mr. Pomeroy be left in his residence which was in conformance.

During rebuttal, Mr. Barydukus stated that he hoped the BZA would disregard the allegations about the potential use of the structure. No intent was made to violate any zoning provision for the construction of the garage. Mr. Barydukus stated that at the end of previous testimony, he had tried to persuade Mr. & Mrs. Pomeroy for a smaller structure. They had tried many different structures. Mr. Pomeroy needed a good size floor area. Mr. Barydukus stated that he questioned the height.

Mr. Hyland inquired as to the reason for such a large structure. Mr. Barydukus stated that the garage would be used to house three automobiles that Mr. Pomeroy was using and two more that are stored somewhere else. The two storage vehicles were antique vehicles. With respect to the height, the only reason they wanted a two story structure was to have a reasonable appearance from the rear of the building for the neighbors. Instead of looking down on a roof driven into the ground, the applicant would raise the roof above the ground. It would have a better appearance at the rear. That was the only reason for wanting to add the extra height in the back. Mr. Barydukus stated that if the BZA wanted to offer an alternative, they were not opposed to a one story garage without any attic space. It would be simpler to do that according to Mr. Barydukus.

Mr. Hyland stated that it would not change the dimensions. Mr. Barydukus stated that it would change the dimensions but it would alleviate the need for access to the second level. In addition, Mr. Barydukus stated that he did not believe the issue of property values was properly raised. The Pomeroys had lived on the property since 1966 and was just as concerned about property values as anyone else in the area. He stated that the realtor may be correct in saying that this was over-improving the property but it should not affect the property values. Mr. Barydukus stated that Mr. Kunze had a 6 ft. fence all around his property and would be hardpressed to see the top of the garage. Mr. Barydukus stated that the Pomeroys were willing to extend that fence along the Beardman's property if it would help the situation. Mr. Barydukus asked the BZA to grant the variance.

Mr. Hyland stated the Pomeroys had to be willing to talk to the neighbors to work out concessions. He stated that the second story could be lopped off and still keep the four car garage with the same dimensions. Mr. Hyland inquired if the Pomeroys were willing to consider the reduction of the garage dimensions as well. Mr. Hyland informed the applicants that he was inclined to move to deny the variance unless an accommodation could be reached. Mr. Yaremchuk stated the neighbors would not oppose a two car, two story garage. Mr. Hyland stated that it was clear that there was opposition to this but if there was an accommodation to be reached, he felt that they should have the opportunity to talk about it. He stated that he would rather the people worked out the issues rather than deny the variance.

Chairman Smith recessed the meeting for ten minutes to allow the applicant and the citizens an opportunity to change the request. After the recess, Mr. Barydukus informed the Board that his clients had offered to change their proposal to a single story, two car garage but the citizens still opposed it. They were not willing to accept a compromise. Mr. Barydukus informed the Board that there was room for a four car garage without any variance but it would have a detrimental appearance to the property. Mr. Barydukus asked the BZA to rule on the original petition. Chairman Smith stated that there was no justification for the granting of the variance if the applicant could build the garage without a variance. Mr. Barydukus stated that they were not trying to hurt the neighborhood. He stated that they wanted to build within the requested setbacks.

Mr. Kunze informed the Board that there were some people from the opposition who wanted the reduction size to a four car, one story garage. He stated that they wanted the BZA to rule on the petition and then the citizens would look at the plat in the future. Mr. Yaremchuk stated that the BZA had recessed so that the citizens could work out a proposal. Now they wanted the BZA to deny the variance and did not want to work out a compromise.

213

Mr. Kunze responded that he did not have the authority to make a compromise on behalf of the Broyhill Crest Civic Association and they were not present at the hearing. Mr. Yaremchuk stated that Mr. Kunze had been out of the country at the last hearing. Mr. Yaremchuk stated that he felt the proper thing to do was to defer this for a period of two weeks. Chairman Smith stated that the applicant had ample room to construct the garage without a variance. Mr. Barydukus stated that he would try to get a compromise to keep it where it was located. Chairman Smith stated that the applicants did not have a hardship as far as he was concerned. Mr. Yaremchuk stated that he knew the Chairman had voted against the variance but the BZA had voted for it. Mr. Barydukus asked that the variance be withdrawn to allow him to work it out without a variance. Mr. Yaremchuk stated that the applicant had a right to withdraw. If the variance were denied, he could still build it.

Mr. DiGiulian moved that the Board withdraw the variance without prejudice. Mr. Yaremchuk seconded the motion and it passed by a vote of 4 to 1 (Mr. Smith).

//

Page 213, November 3, 1981, Scheduled case of

1:30 P.M. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, appl. under Sect. 3-303 of the Ord. to amend S-80-V-003 for a church to permit access via Prices Lane during construction only and to permit the disturbing of trees and grading within 25 ft. of Prices Lane southern right-of-way line as necessary for development of the temporary construction access and the installation of utility connections, located 1911 Prices Lane, Mallinson Subd., 111-1((1))2, Mt. Vernon Dist., R-3, 317,988 sq. ft., S-81-V-066. (DEFERRED FROM OCTOBER 27, 1981 FOR ADDITIONAL TESTIMONY AND DECISION OF FULL BOARD).

Chairman Smith announced that the BZA had received certain testimony on the application but had agreed to allow for additional testimony if the Board desired. He inquired if anyone in the audience desired to be heard at this time. Mr. James Rees, counsel for the applicant, informed the BZA that he had received the staff comments as revised in Mr. Yates' memo of October 30, 1981. Mr. Rees stated that he had discussed it with Mr. Yates and there was no problem with the memo or the recommendation. Mr. Rees stated that the church was agreeable to the changes. Chairman Smith advised Mr. Rees that the BZA had a few other changes it needed to discuss with the applicant. One was time. Chairman Smith stated that unless there was a reason otherwise, the BZA wanted to establish hours from 7 A.M. to 5 P.M. for the construction process. Mr. Rees stated that he objected for two reasons. One was that the normal working hours were from 7 A.M. until 3:30 P.M. for the contractor. However, the church itself was a sub-contractor and some of their duties would be performed later than the normal contract time. Mr. Rees stated that hours from 7 A.M. to 6 P.M. would be sufficient.

Mrs. Day inquired if the trucks were out from the property by 5 o'clock. Mr. Rees stated that there was no problem with a 5 P.M. deadline for truck traffic. Chairman Smith stated that the other change was also on time. He inquired if a one year time limit was sufficient for construction. Mr. Rees responded that he preferred 15 months. He stated that they could have everything completed in 15 months. Mr. Hyland stated that it would also allow the church to put back the screening and replant trees. He advised the Chairman that the church could not plant trees in December and January.

Mr. Hyland inquired as to the responsibility of the church to repair the road surface of Prices Lane due to damage of the trucks. Ms. Kelsey responded that she had contacted VDH&T and the church was bonded for the temporary construction entrance. They were bonded to repair the area between Vernon View Drive and Linton Lane. However, they were not required to repair that entire length, only the construction entrance. Mr. Hyland stated that he had a real problem with that as the BZA did not give them access to Prices Lane. Any damage there should be the responsibility of the church and not anyone else. Chairman Smith stated that the BZA did not have control over the State roads. Mr. Hyland stated that the BZA could make it a condition as far as what they were asking for. Chairman Smith stated that it was a state road and it was not constitutionally correct to condition it. He stated that the VDH&T could permit the entrance and control that traffic on the roadway. The state did not keep heavy trucks from using that roadway.

Mr. Rees asked the BZA for clarification of the hours as to whether the BZA had agreed to 7 A.M. to 6 P.M. Mr. Hyland asked if the church was willing to consider the road damage issue and not be limited to 25 ft. area in front of the entrance. Mr. Hyland stated that he had the impression that the church was talking about taking care of damages to Prices Lane. Mr. Hyland stated that he had raised the question because of the citizens testimony. The entire road was presently damaged. Mr. Hyland stated that he had viewed the damage. Mr. Hyland inquired of Mr. Rees if the church was talking only of repairing the 25 ft. strip or any damage. Mr. Rees replied that he was talking about the bond. He stated that he was aware that it was required in the amount of $10,000. Mr. Hyland stated that he did not understand the limitations at all. He inquired as to the church's position as far as the damage. Mr. Rees stated that the approval would have to come out of the legal office based in Salt Lake City and he could not respond to the BZA's question. Mr. Hyland inquired as to what had

214

Mr. Rees responded to at the previous hearing. Mr. Rees stated that he was aware that the bond with the State Highway Department covered any damage. Mr. Hyland stated that now it appeared that it did not cover all of Prices Lane. Mr. Rees stated that there were two locations of utility easements across Prices Lane. In the agreement worked out with VDH&T, a 60 ft. cap on each side of the roadway was provided for in order to take care of the roadway. Mr. Hyland inquired as to the area of construction. Ms. Kelsy stated that from property line to property line, it was about 1,100 ft.

Mr. Rees informed the Board that the church was not the only ones using the road for construction and heavy vehicles. He stated that there had been other construction vehicles on a fairly regular basis. Mr. Hyland stated that the point was well taken. However, he had gotten the impression that the cracking in the road had occurred since the construction begun on the church. The impression left with Mr. Hyland at the last meeting was that it had occurred because of the construction entrance. Mr. Hyland stated that he had some concerns. Mr. Hyland stated that the only reason he felt so strongly was because of the problem about the conditions and the citizens' allegations about violations. Prices Lane was being adversely affected and Mr. Hyland stated that the responsibility should be borne by the church. Mr. Hyland stated that he felt it was more reasonable since the BZA had not given access there. However, if nothing could be done, he would accept that.

As a point of clarification, Mr. Stephen Mitchell, counsel for the Stratford-on-the-Potomac Citizens Association questioned the meaning of one part of paragrahp 11B in the staff memo which stated, "Upon the completion of the Lucia Lane entrance or by January 1, 1982." Mr. Mitchell stated that it did not make it clear whether it meant whichever comes first or whichever comes later. Mr. Mitchell asked the Board to clarify the language before adopting it as a condition. Chairman Smith responded that the new time was December 1, 1982. Mr. Rees informed the Chairman that this condition had to do with the use of Lucia Lane for vehicles of the construction workers. Mr. Rees stated that in his discussion with the staff, they had agreed that as soon as it was paved or January 1, 1982 whichever was sooner. Mr. Rees stated that he had not problem with including that language as that had been their agreement. Mr. Mitchell stated that it answered his inquiry.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-V-066 by THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS under Section 3-303 of the Fairfax County Zoning Ordinance to amend S-80-V-003 for a church to permit access via Prices Lane during construction only and to permit the disturbing the trees and grading within 25 ft. of Prices Lane's southern right-of-way line as necessary for development of the temporary construction access and the installation of utility connections, located at 1911 Prices Lane, tax map reference 111-1((1))2, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on October 27, 1981 and deferred for decision until November 3, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-3.
3. That the area of the lot is 317,988 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED subject to the Conditions of S-80-V-003 with Conditions no. 11 and 12 being amended as follows:

11. There shall be no removal of trees or grading within twenty-five (25) feet of Prices Lane's southern right-of-way line except for tree removal or grading necessary for:

A. The prospective installation of utility connections provided, however, that the trees to be temporarily disturbed shall be kept to a minimum and the Arborist's Office shall be notified and shall field inspect the utility easements prior to the installation of the utilities.

B. A temporary construction entrance as shown on the plat, provided, however, that the entrance shall be in accordance with the standards and specifications for temporary construction entrances set forth in Volume 3 of the Public Facilities Manual; and that the use of such entrance shall be limited to the duration of

construction but in no event shall exceed a period of thirteen (13) months, December 1, 1982. Upon completion of the Lucia Lane entrance or by January 1, 1982, whichever is sooner, said construction entrance shall be used by construction equipment only and shall not be used by automobiles and vehicles of construction workers. Use of the temporary construction entrance shall be limited to the hours between 7:00 A.M. and 6:00 P.M., Monday through Saturday. In relation to the construction entrance at this location, there shall be no construction vehicles of any kind parked on Prices Lane or the other residential streets in the vicinity of the temporary entrance and there shall be no parking on these streets by construction workers. Additional screening, supplemental and replacement plantings shall be provided along Prices Lane at the discretion of the Director of Environmental Management.

12. Means of ingress and egress for all vehicles, to include service and delivery vehicles, shall be via Lucia Lane, except for the temporary construction entrance provided for in condition no. 11 above.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 2 (Messrs. Hyland and Yaremchuk).

Page 215, November 3, 1981, Scheduled case of

1:45 P.M. JOHN W. & DOROTHY P. MOFFETT, appl. under Sect. 18-401 of the Ord. to allow construction of deck additions to dwelling to 11.1 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 9114 Home Guard Dr., The Oaks at Signal Hill Subd., 78-2((16))456, Annandale Dist., R-3(C), 9,197 sq. ft., V-81-A-178. (DEFERRED FROM OCTOBER 21, 1981 FOR ADDITIONAL INFORMATION AND FROM OCTOBER 27, 1981 FOR DECISION OF FULL BOARD).

Chairman Smith inquired if anyone had any questions on the additional information provided. Since there was not any, he closed the public hearing.

Page 215, November 3, 1981 Board of Zoning Appeals
NOHN W. & DOROTHY P. MOFFETT
R E S O L U T I O N

In Application No. V-81-A-178 by JOHN W. & DOROTHY P. MOFFETT under Section 18-401 of the Zoning Ordinance to allow construction of deck additions to dwelling to 11.1 ft. from rear lot line (19 ft. minimum rear yard required by Sects. 3-307 & 2-412), located at 9114 Home Guard Drive, tax map reference 78-2((16))456, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1981; and deferred for additional information and decision until October 27, 1981 and November 3, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 9,197 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being shallow and has exceptional topographic problems and has an unusual condition in that the drainage from the adjacent property ponds into the rear yard which makes it unusuable.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Board of Zoning Appeals

RESOLUTION

216

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remian valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 2 (Mr. Smith and Mrs. Day).

Page 216, November 3, 1981, Scheduled case of

2:00 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195. (DEFERRED FROM OCTOBER 21, 1981 AND FROM OCTOBER 27, 1981 FOR HEARING BY FULL BOARD).

Mr. William Donnelly asked the Board another deferral for a one week period as the Zoning Administrator had just ruled that they needed a Special Exception as well as a variance. Mr. Hyland moved that the application be deferred. Mr. Yaremchuk seconded the motion and it passed by a vote of 4 to 0 with 1 abstention (Mr. DiGiulian).

// There being no further business, the Board adjourned at 4:50 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on June 21, 1983

Approved: June 28, 1983
Date

217

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, November 10, 1981. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:15 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of;

10:00 A.M. BURKE LAKE ASSEMBLY OF GOD CHURCH, appl. under Sect. 18-401 of the Ord. to allow operation of church and related facilities, authorized by S-269-77, with parking areas, including aisles and driveways, having other than dustless surface for a period of 5 years (dustless surface req. by Sect. 11-102), located 9998 Pohick Rd., 88-1((1))6 & 7, Springfield Dist., R-1, 3.0 acres, V-81-S-190.

Mr. Norman Lance of 10000 Pohick Road, Pastor of the Burke Lake Assembly of God Church, informed the Board that they were requesting a waiver of the dustless surface due to a financial hardship of the church. Chairman Smith advised Mr. Lance that the BZA could not grant a variance based on a financial hardship. Mr. Lance stated that he had been advised that notwithstanding the financial hardship, he could ask that some consideration be given to the church as they were not asking for a variance from the requirements but only a temporary variance. With regard to the comments in the staff report from Design Review, Mr. Lance made note that it was the church's intent to pave the driveway and the turning lane and the 16 parking spaces in front of the church. Some of these areas had already been paved. The variance was necessary for the area to the side and rear of the church as a temporary variance. In response to a question from Mr. Hyland regarding the cost of paving the area, Mr. Lance stated that it would be $20,000. Mr. Lance informed the BZA that the church was new having been completed a year ago in September. Mr. Hyland inquired if the money for paving had been included in the church's budget. Mr. Lance responded that due to the inflation and the cost of construction, the $425,000 estimate had already cost the church $560,000 without any major change to the building. Mr. Lance stated that the increase was due to cost escalation. Mr. Lance informed the BZA that the church had been using the parking for a year and there was not any objection. Mr. Hyland inquired if there was any problem with dust. Mr. Lance stated that there were not any neighbors. The area consisted of about 6 acres and the church owned the remainind land behind that for a total of 15 acres around the church building. Across the street was Burke Lake Park and another parcel of 42 acres. Mr. Lance stated that the church property was 600 ft. down from Ole Keene Mill Road. There were trees throughout the whole area. Mr. Lance stated that the church wanted to pave the area soon but they needed some time.

Mr. Hyland inquired as to the drainage of the property and whether the paving would create a problem. Mr. Lance stated that all drainage requirements had been completed. All the appropriate drainage requirements had been installed. He stated that there should not be any adverse effect.

Chairman Smith inquired as to the person who had advised the church to seek a variance in this case. Mr. Lance replied it was a gentleman from the 4th floor. He stated that he could not remember the name but had it in his records and could provide it. Chairman Smith stated that he was amazed that someone would do that as this was outside the boundaries of the BZA. Mr. Lance stated that the response was that the Board could grant it. Mr. Lance stated that he did not wish to place responsibility on someone's shoulders but the individual knew of no other procedure that the church might try. Mr. Lance stated that it was the church's time, effort and expense in seeking the variance.

Mrs. Day inquired about the comments from Design Review regarding the field inspectiong and the paving. She inquired as to how far back was paved. Mr. Lance showed the Board members on the plat the area that was paved. He informed the Board that there was a triangular piece at the back which was not paved. The only existing building was the parsonage. Burke Lake Park was across the street. Mrs. Day inquired as to the number of cars going past the church to the gravel area and was informed the maximum would be 15 to 20. Mr. Lance stated that the congregation was about 130 individuals. In response to when the church could pave the area, Mr. Lance stated in about two to three years. Mr. Lance informed the Board that the church was a growing congretation. They had more than doubled over the past year. Mrs. Day inquired if the church would have a large growth before two or three years. Mr. Covington stated that the church could not get an occupancy permit until they complied with all of the requirements. Mr. Lance stated that it was bind for the church right now and they needed some sort of help for a short period of time. Two or three years would be fine.

Mr. Hyland raised a question as to whether it was a matter of site plan or whether the BZA had the right to give a variance to the dustless surface for a period of time. He stated that the Chairman had raised the question of the financial hardship not being reason in itself. Mr. Hyland stated that the applicant had stated that he would meet the requirements but he needed some time to comply. It was not bothering anyone to not meet the requirements immediately. The property surrouding the church would not have any adverse impact. Mr. Hyland inquired as to whether or not Mr. Hendrickson could have granted the request. Chairman Smith stated that this was a temporary waiver. He stated that the BZA could suggest that Mr. Hendrickson waive the requirement for a period of two years as it was difficult for an

applicant to justify a hardship under the Ordinance for this type of variance. Chairman Smith stated that the BZA had to be very careful as he felt that the Director of Environmental Management had the authority under the Ordinance to approve exemptions for a temporary purpose. Mrs. Day stated that the gravel was temporary.

Mr. Yaremchuk inquired as to the length of time the church wanted the variance and Mr. Lance stated that the church had asked for five years. He stated that whatever the BZA did would be helpful to them. Mr. Yaremchuk inquired as to why the church had stated two years instead of three. Mr. Lance stated that they had asked for five years in the hope of getting three. Mr. Yaremchuk stated that he could pray on gravel just as well as pavement. He stated that the idea of paving was primarily for commercial areas. Mr. Yaremchuk stated that he looked at churches differently. People only come once a week to church. A lot of the area for this church was already paved. People out in the country park on dirt. Mr. Yaremchuk stated that the BZA was not to consider financial hardships. He stated that the church was not commercial but was a non-profit organization. The BZA was established to give relief. Mr. Yaremchuk stated that the County staff was passing the buck. He sympathized with the church and wanted to be practical about the situation. Mr. Yaremchuk stated that he did not want to see the church in a financial bind. Mr. Yaremchuk asked the Reverend for an honest answer as to the amount of time desired for the variance. Mr. Lance responded that he would like three years.

Mr. DiGiulian inquired as to the present attendance on Sundays and was informed it was about 130 individuals. Mr. DiGiulian noted that was a long way to go to get up to 500 seats in the sanctuary.

Page 218, November 10, 1981 Board of Zoning Appeals
BURKE LAKE ASSEMBLY OF GOD CHURCH

R E S O L U T I O N

In Application No. V-81-S-190 by BURKE LAKE ASSEMBLY OF GOD CHURCH under Section 18-401 of the Zoning Ordinance to allow operation of church and related facilities, authorized by S-269-77, with parking areas, including aisles and driveways, having other than dustless surface for a period of 5 years (dustless surface req. by Sect. 11-102), on property located at 9998 Pohick Road, tax map reference 88-1((1))6 & 7, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.0 acres.
4. That the parking shown on the plat is not needed except on rare occasions. The attendance at the church does not exceed the seating capacity and that the gravel surface is more in keeping with the character of the area and would minimize the storm water runoff.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. This variance is granted for a period of three years.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 219, November 10, 1981, Scheduled case of

10:10 A.M. DAVID O. RADLOFF, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport as an attached garage 7.65 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 703 McArthur Ave., Concord Green Subd., 38-1 ((17))32, Centreville Dist., R-3, 12,240 sq. ft., V-81-C-191.

219

Mr. David Radloff of 703 McArthur Avenue in Vienna gave the Board the background of his case. He stated that his house was ten years old situated in an area with R-3 zoning. The lot was 80 ft. wide. Mr. Radloff stated that his house was the last one one completed in this section of the subdivision. Mr. Radloff stated that this was the Falls Church area of Fairfax County. He had purchased the house and assumed the loan and moved into it in July of 1981. Mr. Radloff stated that he did not have a survey. The shrub line sat back from the existing carport so he had never considered that there was a setback requirement. Mr. Radloff informed the Board that he wished to enclose the carport. From the standpoint of economy, this was not a new house. There was an entranceway off of the kitchen into the carport. The enclosure of the carport would be another means of insulation. It would allow him to warm up the automobiles which was necessary for his diesel automobile. Mr. Radloff stated that the diesel was difficult to start. He stated that even after a warmup of ten minutes, the fuel line had frozen up in it. Mr. Yaremchuk stated that it would save money to enclose the carport.

Mr. Radloff informed the Board that he had received encouragement from the neighbors. Mr. Radloff stated that the setback would be 7½ ft. in lieu of the required 12 ft. He stated that the variance would be less than 5 ft. and fit in with the visual impact of the lot. He stated that they were requesting the variance so that they could enclose the carport. Mr. Hyland inquired as to the distance of the neighbor's home from the shrubbery. Mr. Radloff stated that it was about 20 to 25 ft. Mr. Hyland inquired as to what was on that side of the neighbor's house. Mr. Radloff stated that his neighbor had plantings and shrubbery and an area of blocks there. Mr. Hyland inquired if there were other carports in the area. Mr. Radloff responded that there were other garages in the area. He stated that he had only moved in in July. Mr. Hyland inquired as to the age of the subdivision and was informed that Mr. Radloff's house had been completed in 1971 and had been the last one in the subdivision.

Mrs. Day stated that if the carport was enclosed, it would not take up any more room. Mr. Radloff stated that he would only add aluminum siding and a garage door. The garage would still be 7.65 ft. from the side lot line.

Page 219, November 10, 1981 Board of Zoning Appeals
DAVID O. RADLOFF

RESOLUTION

In Application No. V-81-C-191 by DAVID O. RADLOFF under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport as an attached garage 7.65 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 703 McArthur Avenue, tax map reference 38-1((17))32, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 12,240 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property. This is an example of where the carport was allowed to project into the setback area and after a period of years, the applicant decided to enclose the carport. The enclosure of the carport will not come any closer to the lot line than it was originally allowed.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 220, November 10, 1981, Scheduled case of

10:20 A.M. ROLLING VALLEY PLAZA, INC./CROWN BOOKS, appl. under Sect. 18-401 of the Ord. to allow a building mounted sign for individual enterprise within a shopping center, located 9236-9274 Old Keene Mill Rd., Rolling Valley Plaza, 88-2((1))4A, Springfield Dist., C-6, 847,242 sq. ft., V-81-S-194,

Mr. Bernard Fagelson, attorney at law, with an office in Alexandria and Mr. Corbett represented Rolling Valley Plaza and Crown Books. Mr. Fagelson stated that all of the notices were in order. He stated that Rolling Valley Plaza was a large mall in the Springfield District on Old Keene Mill Road. It was quite a distance from the road. Mr. Fagelson informed the Board that years ago, the VDH&T had changed the grade of the road and it was not easy to see the various locations of the stores in the mall. For the record, Mr. Fagelson informed the Board that in the latter part of September 1981, Mr. Corbett had sent a letter to the Department of Inspections that they would remove the existing sign and replace it with a 4'x44¼' sign. He stated that somehow they had picked up the figures of 3'x48' instead of the 4'x44.6'. Mr. Fagelson stated that the advertising of the variance was not affected by the sign dimensions and the difference of the sign was minimal. Mr. Fagelson stated that the only question for the Board was the authority under the Ordinance allowing them to ask for a sign in a shopping center that did not have frontage visible from the street. Mr. Fagelson stated that Crown Books did bring in a lot of traffic into the mall.

Chairman Smith inquired as to the dimensions of the sign and was informed it was 4'x44.6'. Mr. Hyland stated that was 10 sq. ft. more than the sign shown on the plan. Mr. DiGiulian stated that it was 10 sq. ft. less than what had been there. Mr. Covington informed the BZA that the sign dimensions were not advertised. Chairman Smith assumed that the original sign was part of the allotted sign. Mr. Hyland inquired if there were other stores in the central court of the mall. Mr. Fagelson stated that there were other stores but Crown Books was the only store with an entrance from the outside. The other stores entered from the inside of the mall. Chairman Smith stated that this would bring in a great deal of traffic that would benefit the other stores.

There was no one else to speak in support and no one to speak in opposition.

Page 220, November 10, 1981 Board of Zoning Appeals
ROLLING VALLEY PLAZA, INC/CROWN BOOKS
RESOLUTION

In Application No. V-81-S-194 by ROLLING VALLEY PLAZA, INC./CROWN BOOKS under Section 18-401 of the Zoning Ordinance to allow a building mounted sign for individual enterprise within a shopping center on property located at 9236-9274 Old Keene Mill Road, tax map reference 88-2((1))4A, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is C-6.
3. The area of the lot is 847,242 sq. ft.
4. That the property is located within a shopping center that could not be seen from the street and to permit a sign would be reasonably in keeping with Section 12-305.

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

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

221

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 221, November 10, 1981, Scheduled case of

10:30 A.M. MR. & MRS. CURTIS R. BUCKLIN, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 2 ft. from side lot line (12 ft. min. side yard req. by Sects. 3-307 & 10-105), located 6807 Jerome St., Loisdale Estates Subd., 90-4((6))187, Lee Dist., R-3, 14,400 sq. ft., V-81-L-197.

Mr. Curtis Bucklin of 6807 Jerome Street in Springfield informed the Board that his property had a sanitary sewer which took up 38 ft. of the back lot preventing construction. He stated that there were other garages in the area that were built 2 ft. from the line. He stated that the reason he did not want to build his garage 12 ft. from the property line was so that he could get a pool into the yard. The yard was not big enough with the sanitary sewer easement. He stated that none of the neighbors objected the garage. In response to questions from the Board, Mr. Bucklin stated that he had owned the property for four years. Chairman Smith informed the applicant that the garages built 2 ft. from the lot lines were built prior to the existing Ordinance which did not permit that anymore. Mr. DiGiulian stated that with the sanitary sewer easement coming so far into the lot that if the applicant moved the garage to comply with the 12 ft. requirement, he would not be able to get into the garage. Chairman Smith informed the Board that it could grant the variance in part if it felt the garage was too close to the lot line.

Mrs. Day inquired as to the distance from the side of the house to the lot line and was informed it was 22 ft. from the corner of the house to the side lot line. The driveway was about 6 ft. from the side lot line. Mr. Bucklin stated that if he moved the garage over 12 ft. and made it 24 ft. wide, it would be right in the middle of the back yard. Mrs. Day stated that if the garage was moved over 6 ft., the applicant would still be able to get into it. Mr. Bucklin stated that eventually he wanted to construct a pool. Mrs. Day stated that did not concern the Board today. Mr. Bucklin stated that the neighbors did not object to his proposal. Mrs. Day inquired as to what was located on the neighbor's property. Mr. Bucklin stated that there was a shed right on the line but it was movable. Mr. Bucklin stated that he had 38 ft. of his yard which was unusable because of the sewer easement.

There was no one else to speak in support and no one to speak in opposition.

Page 221, November 10, 1981 Board of Zoning Appeals
MR. & MRS. CURTIS R. BUCKLIN
RESOLUTION

In Application No. V-81-L-197 by MR. & MRS. CURTIS R. BUCKLIN under Section 18-401 of the Zoning Ordinance to allow construction of detached garage *2 ft. from side lot line (12 ft. minimum side yard req. by Sects. 3-307 and 10-105), on property located at 6807 Jerome Street, tax map reference 90-4((6))187, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 14,400 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being narrow and has an unusual condition in the location of the existing buildings on the subject property. In addition, a substantial portion of the rear yard is unusable due to a sanitary sewer easement.

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

RESOLUTION

222

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED IN PART *(to allow construction of detached garage 6 ft. from side lot line) with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 222, November 10, 1981, Scheduled case of

10:40 A.M. DR. JOHN P. PORTASIK, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5.17 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 1119 Anesbury Ln., 102-4((10))65A, Mt. Vernon Dist., R-3, 11,327 sq. ft., V-81-V-198.

The Board was in receipt of a letter from Dr. Portasik asking for a withdrawal of the application due to financial problems with the cost of construction. Mr. Hyland moved that the Board allow the withdrawal without prejudice. Mrs. Day seconded the motion and it passed by a vote of 5 to 0.

//

Page 222, November 10, 1981, Scheduled case of

11:00 A.M. CONGRESSIONAL SCHOOLS OF VIRGINIA, INC., appl. under Sect. 3-203 of the Ord. to amend S-81-M-042 for private school of general education to reflect change in corporate name of the permittee, located 3229 Sleepy Hollow Rd., 61-1((1))5, Mason Dist., R-2, 39.4 ac., S-81-M-069.

Mr. Royce Spence, attorney at law, represented the applicant. He stated that the school wished to change the corporate name. The school would be run by the same people. Mr. Spence emphasized that this was only a change in corporation. The old corporation would lease the facility to the new corporation with the same management. Chairman Smith asked for a copy of the lease. Mr. Spence replied that he did not have it with him. Mr. Spence stated that the purpose of this application was to form a new corporation with non-profit status. If a graduate wanted to donate money, it could be a tax deduction and the school hoped to have more funding that way. Mr. Spence stated that was the reason for the change.

Mr. Hyland inquired as to why a new corporation was formed. Mr. Spence replied that there were a number of things that the IRS wanted in the Articles of Incorporation. He thought it would be easier to form a new corporation and operate under a new name. Chairman Smith stated that this also gave the property owners a better advantage. He could charge what he wanted to.

Mrs. Day inquired if the school would still have the horses on the five acres and was informed that they were only there during the summer. Mrs. Day stated that this was a fine school. Mr. Hyland inquired if the ownership would continue to be held by the original corporation and was informed it would be. The new corporation would lease the facility. Chairman Smith stated that he felt the BZA needed some contract on this and inquired if there was going to be a management contract. Mr. Spence stated there was not any management contract. The original corporation would lease the facility to the new corporation. The grounds, buildings, etc. would be leased and the facility would be operated under the same standards and conditions that the present corporation had. Mrs. Day inquired if it was the same Board of Regents and was informed it was. Chairman Smith stated that the Board would include both names in the permit and Mr. Spence stated that was fine. Mr. Hyland inquired as to whom would operate the school and was informed it would be operated by the new corporation. Mrs. Day stated that the property was deeded to the original Congressional Schools of Virginia, Inc. Mr. Spence stated that he had only received three calls on this matter, all concerned that they were going to construct high-rise offices.

There was no one else to speak in support and no one to speak in opposition.

CONGRESSIONAL SCHOOLS OF VIRGINIA, INC.

RESOLUTION

223

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-M-069 by CONGRESSIONAL SCHOOL INC. AND/OR CONGRESSIONAL SCHOOLS OF VIRGINIA, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-81-M-042 for private school of general education to reflect change in corporate name of the permittee, located at 3229 Sleepy Hollow Road, tax map reference 61-1((1))5, County of Fairfax, Virginia, has been property filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 10, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 39.4 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. All other conditions of S-81-M-042 not altered by this special permit shall remain in effect.

Mr. DiGiulian seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 223, November 10, 1981, Scheduled case of

11:15 A.M. CHURCH OF THE NATIVITY, appl. under Sect. 3-103 of the Ord. to amend S-156-74 for church and related facilities to permit additional parking spaces, located 9616 Old Keene Mill Rd., 88-1((1))10, Springfield Dist., R-1, 10.194 acres, S-81-S-070.

Mr. William Gordon, Engineer, with an office at Issac Newton Square in Reston represented the church. He stated that the church was requesting permission to construct an additional 130 parking spaces on the existing 10 acre site. The church currently had 170 parking spaces which were inadequate. The parking impacted the area. Mr. Gordon stated that the seating capacity of the church was 800 which was approved under Special Permit No. S-156-74. Mr. Gordon stated that the church was not proposing to expand the church or the seating capacity.

Mr. Hyland inquired as to the number of additional parking spaces to be provided and was informed it would be 134 spaces. There was to to be some reconfiguaration of the parking area. Mr. Gordon stated that the church had to add three handicapped spaces. The total parking would be 304 spaces. Mr. Covington stated that the total parking was taken from a plat that had been submitted that did not coincide. Mr. Gordon inquired if the parking had been corrected to 139 or 134. Chairman Smith stated that 304 was the total parking spaces.

224

Mr. Hyland stated that he had a question regarding the previous Special Permit which did not have any reference to the number of parking spaces. Mr. Hyland stated that he presumed that it had been shown on the plat. The resolution had no reference to the maximum seating capacity in the church. Mr. Hyland stated that there was nothing in the permit which referred to that. Chairman Smith inquired if the original plat had listed 139 parking spaces. Mr. Gordon stated that the parking tabulation indicated 139 parking spaces. He believed the plat had shown 170 parking spaces. Chairman Smith stated that the use was based on the plat submitted. Mr. Covington stated that there were 186 spaces under the old permit.

Chairman Smith read a letter from the owner of lot 20 which consisted of five acres asking for a 25 ft. buffer from the lot instead of the required 10 ft. Chairman Smith stated that parking was required to set back a considerable distance in the past. Now the applicant was requesting to come within 10 ft. of the line. Mr. Covington stated that met the Code requirements. Chairman Smith stated that there was not any screening there. He inquired if the church had to provide screening. Mr. Covington stated that screening had to be to the satisfaction of the Director of Environmental Management. Chairman Smith stated that screening was not shown on the site plan. Chairman Smith continued reading the letter from the owners of lot 20 who requested that the parking be 25 ft. from the lot and that approved landscaping be done and that the existing drainage, if not adequate, be provided by the church. The owners had stated that the church should be granted an egress to Old Keene Mill Road as requested. The owners were unable to attend the hearing but wanted their views represented. The letter was signed by Mr. and Mrs. C. Z. Hitchcock of 5208 Chowan Avenue and owners of property at 9609 Old Keene Mill Road.

There was no one else to speak in support and no one to speak in opposition. During rebuttal Mr. Gordon stated that the church was required to provide storm detention. He stated that they would have to modify their plan. There was a problem with the outfall on the other side of Old Keene Mill Road and the church would have to retain the water on its site. With respect to the 25 ft. setback, the church preferred to keep it at 10 ft. as the 25 ft. would hurt the parking. The area was cleared already with some small scrub trees on it. Mr. Hyland inquired if the church would be parking within that 10 ft. area. He was advised by Mr. Gordon that the Ordinance required them to provide plant materials in that area.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-S-070 by CHURCH OF THE NATIVITY under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-156-74 for church and related facilities to permit additional parking spaces located at 9616 Old Keene Mill Road, tax map reference 88-1 ((1))10, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 10, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 10.194 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit is subject to all other provisions of S-156-74 not altered by this permit.
8. The maximum seating capacity shall be 800.
9. The number of parking spaces shall be increased by 134 in order to accommodate a total of 304 parking spaces.

Mr. DiGiulian seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 225, November 10, 1981, Scheduled case of

11:30 A.M. JACQUELINE S. NOVAK T/A POTOMAC EQUITATION, appl. under Sect. 3-103 of the Ord. to permit continuation for a new term of riding stable and related activities as permitted by S-84-77, expired, and with reactivation of tack shop and permission to hold a maximum of 5 horse shows annually, located 5320 Pleasant Valley Rd., 43-3((1))1, Springfield Dist., R-1, 160 acres, S-81-S-071.

Mrs. Jacqueline Novak of 6220 Pleasant Valley Road in Centreville was the applicant. Mrs. Day inquired about the name of Mock on the previous application. Mrs. Novak stated that Randy Mock was no longer a part of the application. Chairman Smith stated that this was really a new application and that the advertising had been misleading. Mrs. Novak informed the Board that she was applying for a special permit for a riding stable and related activities on a 160 acre farm on Pleasant Valley Road next to the Cox Vegetable Farm. She stated that Cox's farm was the only structure visible from her property and all that could be seen was some of his greenhouses. Mrs. Novak stated that over the years, she had done a lot of improvements to the property which was leased. The improvements cost approximately $35,000. Mrs. Novak stated that she taught riding and boarded horses. They had hay rides and other normal activities. Mrs. Novak stated that she wished to request a small tack shop which would benefit the students in order to have riding boots and hard hats. The parents were always asking where they could purchae these items. Mrs. Novak stated that she wanted to have horse shows open to the public which for some reason she had been told she could not have. Mrs. Novak stated that she had a large parking area and an unlimited overflow area. The driveway had just been regravelled and she stated that she was heavily involved in making improvements to the property.

Mrs. Novak informed the Board that people appreciated her farm in Fairfax County. She stated that she was one of the largest remaining horse farms in Fairfax County. The property consisted of 160 acres and had beautiful areas for riding all in natural conditions. There was open, grassy fields, woods and lovely streams with flowers. Mrs. Novak stated that she was requesting to have 70 horses on the property. At present, there were only 32 horses. She stated that with 70 acres, there would be more than two acres allowed per horse. Mrs. Day stated that there was quite a bit of background material in the staff report. She inquired if this was the same parcel and tract of land as the one previously granted a special permit to Mrs. Novak and was assured it was. Mrs. Day inquired if all of the requirements such as building a barn and a fence had been met. Mrs. Novak stated that she had built a completely new barn and it had been checked out by Mr. Barnes after her last hearing. Mrs. Day inquired if Mrs. Novak was seeking the same request as had been granted in 1977 previously. Mrs. Novak responded that everything was basically the same except for the tack shop and the horse shows. Mrs. Day inquired as to what days the tack shop would be operated. Mrs. Novak stated that the operation would be run seven days a week during daylight hours. She stated that there were evening classes Sunday through Thursday. Mrs. Day inquired about the five horse shows a year. Mr. Covington stated that it was considered an accessory use to the riding stable. Chairman Smith stated that he felt it should be up to the Zoning Administrator. Mr. Covington stated that horse shows were allowed now when operated by a non-profit organization.

Chairman Smith stated that he did not feel the tack shop should be allowed as they were more in keeping with commercial areas. Mr. Hyland stated that with this kind of business, the closer it was located to the activity the better it was for the people using it. Mrs. Day inquired if the tack shop would get into saddlery and the coats, etc. Mrs. Novak stated that none of her students wore the coats. However, they did like to purchased the black boots from her. Mrs. Novak stated that the boots were a safety requirement as it kept the feet in the stirrups. Mrs. Novak stated that she was not going into the tack shop too heavily. It would basically be selling hard hats, curry combs, brushes, riding crops, boots and some jodhpurs. Mrs. Novak stated that it was not to be a big commercial venture. She stated that some of her people needed assistance in how a hat should fit. As far as saddlery, very little was sold according to Mrs. Novak. Mrs. Day stated that the tack should be limited to hard

226

hats, saddle soap, and stirrup leathers. Mr. Yaremchuk inquired if the BZA was trying to put conditions on what could be sold in the tack shop. Mrs. Day stated that she only wanted to know what would be sold there. Mr. Yaremchuk stated that it was making a mountain out of a molehill. Chairman Smith stated that Mrs. Day was in order if the BZA was going to allow commercial sales. Mr. Yaremchuk stated that the tack shop was related sales pertaining to horses. Mrs. Day inquired if Mrs. Novak was going to make a profit on it. Mr. Yaremchuk argued that it was not a commercial enterprise as it was related to horses. Mrs. Day stated that if it was all related to horses, Mrs. Novak could do shoeing of horses there.

Mrs. Day inquired of Mrs. Novak that when talking about the tack shop, was she talking about selling items related to the immediate needs of the students exclusive of saddlery. Mrs. Novak replied that she did not want to exclude saddlery. She stated that some of her students purchased leather insets. Mrs. Novak stated that she did not intend to stock 10 to 20 saddles but wanted to be able to sell some. Mrs. Novak stated that she had some hard hats which she let her students use but they had to fit correctly.

Chairman Smith told the Board that under the program with the Fairfax County Recreation Dept. the students were required to wear a hard hat. There were established businesses in the County where the equipment could be purchased. He inquired of Mrs. Novak as to her hours of operation. Mrs. Novak stated that the hours were daylight hours except on Monday through Thursday when they operated until 9:30 P.M.

Chairman Smith stated that one of the reasons why Mr. Barnes had not been in favor of the horse shows previously was Mrs. Novak's record for letting the horses get out. The Board had felt that a tack shop could be a related use but since this was lease property and there were several locations in Loudoun County and Fairfax County that could provide all of the equipment that was needed and they were in commercial facilities, it had felt that the tack shop was not a necessity here. Mr. Hyland responded that competition was not bad. Chairman Smith stated that if Mrs. Novak had a piece of property in a residential area, then it was unfair competition. He stated that she had to establih in a business area. Mr. Yaremchuk inquired if that was a policy of the Board of Zoning Appeals. Mr. DiGiulian inquired as to the location of the nearest facility where the equipment could be purchased and was informed it was the City of Fairfax about 15 miles away. Chairman Smith stated that Mrs. Novak could have everything without a tack shop.

Mrs. Novak asked to make a comment. She informed the Board that she had not asked for a tack shop in the 1977 Special Permit but had requested it in the 1970 application and it was granted. Then due to circumstances involving an automobile accident, she had to abolish it at her own volition. Mrs. Novak stated that she was not trying to compete with the local merchants. She stated that she taught riding and did not believe in that kind of money. She stated that she intended to send her students for saddles, etc. But she would like to be able to provide them where it was convenient for them. Mr. DiGiulian informed the BZA that he could not believe someone would drive past an existing facility just to get to Mrs. Novak's tack shop.

There was no one else to speak in support and no one to speak in opposition.

Page 226, November 10, 1981 Board of Zoning Appeals
JACQUELINE S. NOVAK T/A POTOMAC EQUITATION

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-S-071 by JACQUELINE S. NOVAK, T/A POTOMAC EQUITATION under Section 3-103 of the Fairfax County Zoning Ordinance to permit continuation for a new term of riding stable and related activities as permitted by S-84-77, expired, and with reactivation of tack shop and permission to hold a maximum of 5 horse shows annually, located at 5320 Pleasant Valley Road, tax map reference 43-3((1))1, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 10, 1981; and

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

1. That the applicant is the lessee.
2. That the persent zoning is R-1.
3. That the area of the lot is 160 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The applicant shall be allowed to hold five (5) horse shows within a one year period from the granting of this special permit. However, applicant must request permission in writing at least fifteen (15) days ahead of the event and receive prior written permission from the Zoning Administrator for each individual horse show. Requests shall be approved for only one (1) such horse show at a time, and such requests will be approved only after the successful conclusion of a perioud horse show or for the first one at the beginning of another yearly period. Requests shall be approved only if there are no pending violations of the conditions of the Special Permit. Any substantiated complaints shall be cause for denying any future requests for horse shows for the remainder of that period, or, should such complaint occur during the end of the allowed yearly period, then this penalty shall extend to the next yearly period.
8. The hours of operation shall be seven (7) days a week from daylight to 9:30 P.M.
9. A tack shop shall be permitted for the sale of items of convenience for the students exclusive of saddlery.
10. This permit is granted for a period of three (3) years with the Zoning Administrator empowered to grant two one-year extensions.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 227, November 10, 1981, Scheduled case of

11:45 A.M. F. DOUGLAS SMITH & CAROLINE KMITCH, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 10.9 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 7846 Southdown Rd., Wellington Villa Subd., 102-2((18))A1, Mt. Vernon Dist., R-2, 9,942 sq. ft., V-81-V-196.

Mr. William Gordon of 1930 Issac Newton Square in Reston represented the applicants. He informed the Board that the applicants had a substandard lot both in width and in area. The lot had 77.5 ft. of width and 100 ft. minimum was required for the R-2 zone. The lot area contained 9,902 sq. ft. and the requirement was 15,000 sq. ft. minimum. Mr. Gordon stated that the distance between the adjacent house on the south and the existing dwelling was about 52 ft. which would be reduced to 38 ft. with the proposed addition. Mr. Gordon stated that the addition was part of a $120,000 renovation and they felt that the restriction would be a hardship. Mr. Hyland inquired as to the present owner of the property and was informed that the property was in both names of Smith and Kmitch. Mr. Gordon stated that the house was not presently occupied but that the applicants were getting married in the spring. Mr. Hyland inquired if they had been aware of the restrictions as far as the building. Mr. Gordon stated that he did not believe that they had been aware of the restrictions and might have been mislead by the realtor. Mrs. Day inquired if they had gotten a title rundown and was assured they had. Mr. Hyland stated that setbacks were never discussed unless brought up by the purchaser.

Chairman Smith stated that the square footage shown in the application did not agree with the staff report. Mr. James H. Guyinn had prepared the house location survey indicating a strip of 5 ft. which was to be conveyed to the Commonwealth of Virginia. Mr. Gordon stated that he believed that accounted for the difference in area. Chairman Smith stated that it was a 400 sq. ft. difference. Chairman Smith inquired as to when the property had been sold. Mr. Gordon stated that it had been sold the first week in September. Chairman Smith asked for a copy of the deed and inquired if the variance application had been filed after the settlement

228

date. Mr. Gordon responded that the variance application was filed on September 22, 1981 after the settlement date.

Mr. Hyland inquired as to what the addition was going to consist of. Mr. Gordon stated that the upper level would be a family room and below it would be an extension of the master bedroom.

Mr. Charles Graves, a contiguous property owner to the south, of lots A2, A3 and C informed the Board that he was in an akward position. He stated that he had an appointment to see his attorney at 1 o'clock and hoped to be able to present a written statement by 2 o'clock. Mr. Graves stated that he wanted to submit a written statement but needed a few hours with his attorney. Chairman Smith inquired if Mr. Graves wanted to present his information prior to the BZA making its decision. Mr. Graves stated that he would be prepared to come back after lunch. Mr. DiGiulian suggested that the BZA defer the matter until the end of the agenda. Chairman Smith inquired if there was anyone else to speak in opposition. He stated that the BZA would recess the case until about 2:30 P.M.

Mr. Hyland was sympathetic with the request even though it was at the last moment. However, he inquired as to the position of the applicant since this was coming up at the last moment. He inquired if there was any difficulty with the timing proposed. Chairman Smith stated that if this application had not been a part of the regular agenda, the Board would have recessed for lunch by now anyhow. Mr. Gordon stated that he had just spoken with the applicants and they wished to get the matter taken care of. He stated that he believed the attorney had been meeting with Mr. Smith this morning. Mr. Gordon inquired as to a reason for requesting the deferral until after lunch. Chairman Smith replied that Mr. Graves had an appointment with his attorney. Mr. Gordon apologized for his irregular request but asked the BZA for its consideration.

Ms. Kmitch informed the Board that she and her fiance had had three meetings with the Graves about the variance. She stated that they had modified the design. After it was modified, the Graves wanted landscaping. She stated that they had provided three plans to choose from. Ms. Kmitch stated that they had been meeting with them all along. She stated that she wanted the matter to go forward as quickly as possible. Mr. DiGiulian stated that he had a question of Mr. Gordon and inquired as to the distance of Mr. Graves' house from the property line between the two lots. Mr. Gordon stated that the distance was 52 ft. now and after the addition it would be 37 ft.

Mr. Yaremchuk inquired if Mr. Graves was able to give his opposition to the Board without the advice of his attorney. He inquired if Mr. Graves opposed the variance. Mr. Graves responded that he was not sure and needed some advice before he could take a position. He stated that he stated meeting with his attorney and ran out of time. Mr. Hyland inquired as to how long Mr. Graves had been meeting with counsel and was informed since yesterday. He stated that he had been working with the applicants for 20 days. Mr. Yaremchuk stated that the only issue before the BZA now was whether to defer the application until the end of the agenda. Mr. Yaremchuk stated that Mr. Graves lived right next door to the applicants. He stated that he would not be comfortable voting on the case if Mr. Graves was not able to present his case. He stated that if the applicants had been talking back and forth for weeks, one more hour was not going to make much difference. Mr. Yaremchuk stated that he would like to have the proper justification. Chairman Smith stated that he had not heard the narrow lot justification. Mr. Gordon stated that it was about 27 ft. to the property line. He stated that he was prepared to go back and expand on the justification. Mr. Yaremchuk moved that the Board defer the matter until the end of the agenda. Mr. DiGiulian seconded the motion.

//

Page 228, November 10, 1981, Recess

At 12:35 P.M., the Board recessed for lunch and reconvened at 1:45 P.M. to continue with the scheduled agenda.

//

Page 228, November 10, 1981, Scheduled case of

12:00 P.M. WILLIAM P. & ALICIA MENZA, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 7.7 ft. from side lot line sich that total side yards would be 16.4 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 3052 Railroad Vine Ct., Five Oaks Place Subd., 48-3((34))41, Providence Dist., R-3, 10,660 sq. ft., V-81-P-180. (DEFERRED FROM OCTOBER 21, 1981 FOR HEARING BY FULL BOARD.)

Mr. Menza of 3052 Railroad Vine Court informed the Board that he wanted to build a two car garage with a width of 20 ft. The variance would allow him to go over the minimum side yard by 4 inches and the total minimum side yard by 3 ft. 7 in. Mr. Menza stated that the reason he wanted a two car garage was that they were a two car family and both adults worked. He

229

stated that he had two subcompact cars and had measured them. He could park both cars and only have 4 ft. in which to open car doors, etc. Mr. Menza stated that he would only be able to enter and exit from the middle of the garage. Mr. Menza stated that his lot was asket as it widened towards the back of the lot. Mr. Menza informed the Board that he only needed a variance for a portion of the structure. The front section required a variance of 3.7 ft. and the back portion required a variance of 1.7 ft. Mr. Menza stated that he would meet the minimum of 8 ft. at the back of the structure.

Mr. Menza stated that a two car garage was consistent with the neighborhood. None of the neighbors had any objections to the structure. Mr. Menza stated that he did not feel there would be any increase in fire or congestion with the garage addition. Mr. Menza stated that the back of his neighbor's house would face the side of his house. There was a setback of 25 ft. from the property line to the neighbor's house. Mr. Menza stated that with his 7 ft., there would be a setback of 32 ft. There was a privacy hedge along the property line and the Menzas intended to put in more pines and other shrubbery on that side of the line.

Mr. Menza informed the Board that if it did not feel he had demonstrated a hardship, he asked that they consider a variance of a few feet. He stated that he would be happy to park both cars side by side. If he did not get the variance, he would only be able to park one car.and to meet the 20 ft. requirement, he would only be able to build a 16 ft. garage which would be a tight squeeze. In response to questions from the Board, Mr. Menza stated that he had owned his property for 3 years and had been the original owner of the house.

There was no one else to speak in support and no one to speak in opposition.

Page 229, November 10, 1981 Board of Zoning Appeals
WILLIAM P. & ALICIA MENZA

R E S O L U T I O N

In Application No. V-81-P-180 by WILLIAM P. & ALICIA MENZA under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 7.7 ft. from side lot line such that total sode yards would be 16.4 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), on property located at 3052 Railraod Vine Court, tax map reference 48-3((34)) 41, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,660 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats includes with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 230, November 10, 1981, Scheduled case of

12:15 P.M. THOMAS F. QUALEY, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 11.8 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 12415 Caisson Rd., Cannon Ridge Subd., 55-4((4))28, Springfield Dist., R-1, 40,197 sq. ft., V-81-S-192. (DEFERRED FROM OCTOBER 21, 1981 FOR ADDITIONAL INFORMATION AND FOR DECISION OF FULL BOARD).

230

Mr. Covington informed the Board that had visited the site and there never had been a garage under the building. He stated that there was a drainage ditch to the right which prevented the applicant from going any distance in that direction and still have an attached garage. Mr. Covington stated that this was a large lot. The nearest house was 100 to 150 ft. away. It was a beautiful subdivision. Chairman Smith stated that it was a new subdivision and Mr. Covington stated that it was 5 to 6 years old. Mrs. Day stated that there was septic at the extreme rear of the yard. Mr. Qualey stated that the septic was about where the storm sewer and storm drainage were located. He stated that the septic field ran to the west. Mr. Hyland inquired if Mr. Qualey could construct a driveway across the storm drainage and storm sewer and was informed by Mr. Covington that he could not. Mr. Hyland stated that the easement ran to the corner of the property. Mr. Hyland inquired as to the topography behind the home and was informed it sloped steeply and was wooded.

There were not any further questions.

Page 230, November 10, 1981 Board of Zoning Appeals
THOMAS F. QUALEY

R E S O L U T I O N

In Application No. V-81-S-192 by THOMAS F. QUALEY under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 11.8 ft. from side lot line (20 ft. minimum side yard req. by Sect. 3-107), on property located at 12415 Caisson Road, tax map reference 55-4((4))28, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 40,197 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems in terms of a slope in the back of the property and has an unusual condition in so far as the storm drainage and sewer easement which transverses the property and makes it impractical to locate the garage on that portion of the property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 231, November 10, 1981, Scheduled case of

12:30 P.M. R. W. CLEMENT, INC., appl. under Sect. 18-401 of the Ord. to allow subd. into 3 lots with proposed lot 3 having width of 12 ft. (150 ft. min. lot width req. by Sect. 3-106), located 11406 Chapel Rd., Chapel Brook Subd., 76-4((2))2A, Springfield Dist., R-1, 7.0 ac., V-81-S-165. (DEFERRED FROM OCTOBER 6, 1981 FOR DECISION AND FROM NOVEMBER 3, 1981 FOR REVISED PLATS.)

231

Mr. Chip Paciulli presented the Board with a letter from the applicant concerning the variance. Chairman Smith accepted it for the record. Mr. Paciulli informed the Board that since the last meeting, the applicant had looked at the possibility of going up Chapel Road. It was impractical as there was 8 ft. high enbankment and several trees. Chairman Smith stated that the BZA had asked that the applicant try to get a single driveway for all three houses. He stated that it was a reasonable request as the sight distance was not too good. Mrs. Day stated that the applicant proposed three driveways all on the curve. Chairman Smith inquired if the BZA was prepared to make a decision. Mrs. Day stated that she was not prepared to make a decision since the applicant had not revised his plats. However, she stated that she did not want to deny the variance either. Mr. Paciulli stated that the individual requesting the single driveway had two driveways himself.

Page 231, November 10, 1981 Board of Zoning Appeals
R. W. CLEMENT, INC.

RESOLUTION

In Application No. V-81-S-165 by R. W. CLEMENT, INC. under Section 18-401 of the Zoning Ordinance to allow subd. into 3 lots with proposed lot 3 having width of 12 ft. (150 ft. min. lot width req. by Sect. 3-106) on property located at 11406 Chapel Road, tax map reference 76-4((2))2A, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 7.0 acres.
4. That the applicant's property is rectangular but long.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. And, whereas, the question of three separate ingresses and curb cuts on Chapel Road is unfeasible, it is required that only one entrance be provided to serve the three lots.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 231, November 10, 1981, Scheduled case of

12:45 P.M. SOUTHERN IRON WORKS, INC., appl. un-er Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195. (DEFERRED FROM OCTOBER 21, 1981 AND OCTOBER 27, 1981 FOR HEARING BY FULL BOARD AND FROM NOVEMBER 3, 1981 AT THE REQUEST OF THE APPLICANT).

232

Chairman Smith stated that the applicant had requested a further deferral for a period of time. The date suggested by the Board was January 5, 1982 at 10:30 A.M. Mr. Hyland informed the Board that it might be necessary for a further deferral at that time.

//

Page 232, November 10, 1981, Continuation of Recessed case of

11:45 A.M. F. DOUGLAS SMITH & CAROLINE KMITCH, V-81-V-196: Chairman Smith called the continuation of the case of Mr. Smith and Ms. Kmitch which was recessed earlier in the meeting to allow Mr. Graves to meet with his attorney. Mr. Gordon read a document into the record as follows:

"This agreement is made and entered into this 10th day of November, 1981, by and between CHARLES H. GRAVES and JANA H. GRAVES, parties of the first part, and F. DOUGLAS SMITH and CAROLINE KMITCH, parties of the second part.

WITNESSETH:

WHEREAS, the parties of the first part are the fee simple owners of property known as 7836 Southdown Road, Alexandria, Virginia 22308 (Tax map reference No. 102-2-((18))Lots C, A2 and A3); and

WHEREAS, the parties of the second part are the fee simple owners of property known as 7836 Southdown Road, Alexandria, Virginia 22308 (Tax Map Reference 102-2((18))Lot A1); and

WHEREAS, the parties of the second part desire a temporary construction easement across the property of the parties of the first part for uprposes of constructing an addition to their premises:

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) case in hand paid, the receipt of which is hereby acknowledged and in consideration of the foregoing promises and other good and valuable consideration, the parties hereto state as follows:

1. The parties of the first part grant unto the parties of the second part a temporary easement and right-of-way reasonably necessary for access by construction vehicles to and from property of the parties of the second part, said temporary easement to commence immediately upon execution of this Agreement and terminate on May 30, 1982, or upon completion of the aforementioned addition to the premises of the property of the parties of the second part, whichever is earlier; provided, however, that this right to use the property of the parties of the first part for access shall be exercised only during periods of actual construction and then only to the minimum extent necessary for such construction and this right shall not be construed to allow the parties of the second part to erect any building or structure or store any materials thereon during said period. It is provided further that the parties of the second part, at their own expense, shall restore as nearly as possible the property of the parties of the first part to its original condition; such restoration shall include any damage to the property of the parties of the first part caused by the use of said temporary easement, whether located within or without said easement.

2. The temporary easement and right-of-way will be limited to paved surfaces on the property of the parties of the first part or surfaces covered with a gravel layer and shall comprise no other part of the property of the parties of the first part.

3. The parties of the first part reserve the right to reasonable use of said temporary easement during the term thereof which will not be inconsistent with the rights conveyed to the parties of the second part or interfere with the use of said temporary easement by the parties of the second part for the purposes and in th3 manner stated.

4. That the parties of the second part agree to pay the parties of the first part the sum of $2,500.00 on or before November 10, 1981.

5. That this agreement is capable of being assigned, in whole or in part, with written notice to all parties identifying the new party hereto.

6. That the common boundaries between the aforementioned properties of the parties shall be surveyed and staked by a professional land surveyor on or before December 15, 1981, with the parties of the second part bearing the total expense thereof.

7. All parties hereto agree that this Agreement shall be construed and enforced in accordance with the Laws of the Commonwealth of Virginia and represent that this document comprises the entire agreement by and between the parties hereto, superseding all prior agreements and representations, and may not be changed except by written instrument duly executed by the parties herein; that time is of the essence in the performance of this contract and that the dates set forth herein are to be strictly adhered to and not merely set forth for purposes of guidance; that if any part or parts of this Agreement be found to be unenforceable, void and/or voidable, the remaining portions of this Agreement capable of

233

being performed shall remain in full force and effect and that only that portion of the Agreement found to be unenforceable, void or voidable shall be stricken.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first above written.

Signed by Charles H. Graves, Jana H. Graves, F. Douglas Smith and Caroline Kmitch."

Chairman Smith stated that he could not see anything in the document that was relevant to the variance request. He stated that the BZA did not really need the document as it was an agreement between the two parties. Mr. Hyland disagreed with the Chairman as the document represented permission of the abutting property owner to accommodate the temporary construction. Mr. Hyland stated that the document did have relevance in that the property owner next door had indicated that he had no objection and would accommodate and assist the applicants. Mr. Yaremchuk agreed with the Chairman that the document had no relevance. Chairman Smith stated that the Board would accept it for the file. Mr. Yaremchuk stated that he thought the adjoining owner was going to make a presentation because of some hardship. Mr. Yaremchuk stated that the document had nothing to do with the variance and he inquired as to what the $2,500 was for. Mr. Gordon responded that it was for the easement through Mr. Graves' property. Mr. Hyland inquired if the $2,500 was contingent upon the granting of the variance. Chairman Smith stated that the Board was getting into an area that did not concern it.

Mr. Charles H. Graves, the lot owner adjacent to the subject property, informed the Board that he appreciated its courtesy in allowing the deferral. Mr. Graves stated that he did not have any objections to the granting of the variance. He stated that he was trying to cooperate in this matter. Mr. Hyland inquired if Mr. Graves planned to continue to live on the property next door and was informed he did. Mr. Graves stated that he had thought about buying another property and moving to another property. It was his present intention to live on the property but he stated that he had it listed for sale. He stated that he and his wife were debating whether to have it up for sale.

R E S O L U T I O N

In Application No. V-81-V-196 by F. DOUGLAS SMITH & CAROLINE KMITCH under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10.9 ft. from side lot line (15 ft. minimum side yard req. by Sect. 3-207) on property located at 7846 Southdown Road, tax map reference 102-2((18))A1, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 9,942 sq. ft.
4. That the applicant's property has an unusual condition in that it is a substandard lot as to width and area and has converging lot lines.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Page 234, November 10, 1981 Board of Zoning Appeals
F. DOUGLAS SMITH & CAROLINE KMITCH
(continued) R E S O L U T I O N

234

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 234, November 10, 1981, After Agenda Items

George Wirth: The Board was in receipt of a letter from Mr. George Wirth of the Three E Development Co. requesting an extension. Mr. DiGiulian moved that the Board grant a six month extension with the condition that it be the final extension and that if construction was not started within six months, the variance would die. Mr. Hyland seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being out of the room). V-242-78 through V-254-78.

//

Page 234, November 10, 1981, After Agenda Items

Basil V. Paddock: The Board was in receipt of a request from Mr. Basil Paddock for an extension. Mr. Hyland moved that the Board grant a six month extension. Mrs. Day seconded the motion and it was passed by a vote of 5 to 0. V-80-V-086 granted to Dosia Dumham on 10/7/80.

//

Page 234, November 10, 1981, After Agenda Items

Chairman Smith announced that a meeting had been scheduled with the BZA, County Attorney and the Zoning Administrator to discuss the various sections of the Ordinance and the BZA's authority in granting variances. Mr. DiGiulian stated that he would like to have a copy of the State Code pertaining to variances. Chairman Smith stated that he was trying to anticipate some of the things the BZA would be involved in and to try to get some answers or seek a solution prior to a public hearing. The meeting was scheduled for November 20, 1981 at 2:00 P.M.

// There being no further business, the Board adjourned at 2:50 P.M.

Gerald L. Hyland for

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on June 28, 1983

Approved: July 7, 1983
Date

235

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Night, November 17, 1981. The Following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland and Ann Day. (Mr. John DiGiulian was absent).

The Chairman opened the meeting at 8:15 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. CHARLES A. ALSTON, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 17.5 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 4202 Pinefield Ct., 45-1((3))(66)5, Springfield Dist., R-3(C), 11,748 sq. ft., V-81-S-205.

Mr. Charles Alston of 4202 Pinefield Court in Fairfax informed the Board that his proposed addition was basically a very tiny family room which he planned to extend. Mr. Alston stated that in order to get a larger home, he would have to move closer to the District and he preferred to stay in this area. Mr. Alston stated that his lot was small and that this was the only area he could build an addition onto his home. In response to questions from the Board, Mr. Alston stated that he had owned his house for three years. The house was eleven years old.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-S-205 by CHARLES A. ALSTON under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 17.5 ft. from rear lot line (25 ft. minimum rear yard required by Sect. 3-307), on property located at 4202 Pinefield Court, tax map reference 45-1((3))(66)5, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 11,748 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and whereas any addition situated on the lot would necessitate a variance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 236, November 17, 1981, Scheduled case of

8:15 P.M. COLVIN RUN PET-OTEL, INC., appl. under Sect. 3-103 of the Ord. to permit continuation for a new term of boarding kennel as permitted by S-122-76, expired, located 10127 Colvin Run Rd., 12-4((1))30, Dranesville Dist., R-1, 5.279 acres, S-81-D-072.

236

Mr. James Morrison of 10127 Colvin Run Road, manager of Colvin Run Pet-otel was the applicant. Chairman Smith informed Mr. Morrison that his special permit had expired. Chairman Smith stated that he had two different land areas & asked which one was correct. The special permit contained 5¼ acres but the staff report indicated there was 9¼ acres. Chairman Smith inquired if the adjoining four acres was the cemetery. Mr. Morrison stated that it was not. Mr. Morrison informed the Board that the plat designation of 5 acres was correct. Chairman Smith asked for the information about the kennel. Mr. Morrison stated that he had 150 runs which was seldom at full capacity. They had about 85 runs occupied at the present time. Mr. Morrison stated that he sometimes had more than 150 when several pets from the same family wanted the animals boarded together. Chairman Smith stated that the special permit had limited it to 250 animals maximum with 75% for dogs and 25% for cats. Mr. Hyland stated that had been in 1970 but the BZA had the matter come up again in 1976. He questioned whether a limitation had been imposed in 1976. Mr. Covington stated that the limitations usually carried forward. Mr. Hyland stated that he had not seen it in the staff report. Mr. Covington stated that he was not able to find it.

Mr. Hyland stated that the present permit did not have a limitation. Mr. Hyland questioned Mr. Morrison about the 200 animals he usually had and the limitation of a maximum of 250 animals. Mr. Hyland inquired if that had changed any. Mr. Morrison responded that he was running about 150 animals and did not like to go over 200 animals. He stated that he wanted to keep the 250 animal maximum. Mr. Yaremchuk inquired that when there was 200 animals in one night, how many people did it take to take care of them. Mr. Morrison stated that it took about twelve at a time. On the present basis, he had about twelve to fifteen people. Mr. Yaremchuk inquired as to what they had to do. He stated he had a dog but was reluctant to put him in a kennel. Mr. Morrison stated that it was a lot of exercise procedures all within the perimeter fence. He stated that they did not take the animals outside of the fence. Mr. Yaremchuk inquired as to the average length of time to board a dog. Mr. Morrison stated that he had very few for just one night and in some instances, an animal had been boarded for a year. He stated that he had one woman client who was a judge and had four dogs. She fell and broke her hip and he had boarded her dogs while her bones were knitting because she had been in a body cast. Mr. Morrison stated that had been several years ago. He stated that he had other animals for protracted stays. At the present time, he had a dog he was holding before it would be shipped to Saudia Arabia. Mr. Yaremchuk stated that he hoped the animals were well taken care of.

Chairman Smith inquired of Mr. Morrison if the land was leased to the Pet-Otel. Mr. Morrison stated that the land was still owned by Mr. Mitchelvick with a 50 year lease renewable for another 50 years. Mr. Morrison stated that the lease was still the same situation as before with only a ten year lapse.

There was no one else to speak in support and no one to speak in opposition.

COLVIN RUN PET-OTEL, INC.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-D-072 by COLVIN RUN PET-OTEL, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to permit continuation for a new term of boarding kennel as permitted by S-122-76, expired, located at 10127 Colvin Run Road, tax map reference 12-4((1))30, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 17, 1981; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-1.
3. That the area of the lot is 5.279 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of animals at the facility at any one time shall not exceed 250.
8. This permit is granted for a period of three (3) years with the Zoning Administrator empowered to grant two (2) one-year extensions upon written request at least 30 days in advance of the expiration date.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 237, November 17, 1981, Scheduled case of

8:30 P.M. OLAM TIKVAH PRESCHOOL, INC., appl. under Sect. 3-103 of the Ord. to permit continued operation of an existing nursery school, located 3800 Glenbrook Rd., Sunny Hills Subd., 58-4((9))17A, 17B, 18A & 18B, Providence Dist., R-1, 4.5205 ac., S-81-P-068.

Ms. Enid Leiss of 8702 Queen Elizabeth Boulevard in Annandale presented the background of the special permit application. She stated that the school opened in 1973. She stated that she had been a teacher then and not the Director. The two persons who started the school began with a small sachool and were close to the synagogue. The school was under the umbrella of the synagogue and many members of the school were members of the synagogue. Ms. Leiss stated that the present application stemmed from a complaint of the synagogue's plans to expand. Ms Leiss stated that the school had not received any complaints previous to this time during the past eight years. Ms. Leiss stated that she had met with Mr. Gerry Carpenter of the Zoning Enforcement staff and had filed for the special permit. Ms. Leiss stated that there never had been any complaints previously and the school had never tried to evade any responsibilities. She stated that they were very visible in the community. Ms. Leiss stated that she had contacted the County several times and had followed all of the Health Department's regulations as well as the Fire Marshal's. At no time had anyone asked for the number of her special permit. Ms. Leiss asked the BZA to handle the application without any further problems.

Ms. Leiss informed the Board that the special permit for the school had much to do with the synagogue's request for expansion. The school met in a small building. When the synagogue finished its expansion, the school would moved into the main building. Ms. Leiss informed the BZA that the architectural plat did not have the square footage of the playground area but she stated that it was adequate. Ms. Leiss stated that there was one correction for the staff report. She stated that there was only one paid teacher and one paid staff member for each class. Mr. Hyland inquired as to the number of classes. Ms. Leiss stated that she taught two classes for five days. There was one three day class and one two day class and another three day class. She stated that there was one teacher with one aid for each class. Ms. Leiss stated that there was a very small number of children with no more than 40 at any one time. There was only one afternoon class.

With respect to the traffic impact, the maximum number of cars would be 25. Ms. Leiss stated that they were at maximum this year. The cars used Glenbrook Road. No cars arrived during rush hour traffic. There was not any on-street parking and all teachers parked on the site. The parents dropped off the children by driving through the driveway so there was not any disturbance to the neighbors. Ms. Leiss stated that the school was proud of its program and felt they were an asset to the community at large.

Mr. Hyland stated that he had a question for the staff. He stated that when the question of expansion came to the BZA, his recollection was that testimony indicated that the new structure would house the school. Ms. Leiss stated that was correct. Mr. Hyland stated that when the

activity of the school was moved into the temple, would there be a requirement for the school to amend its special permit. Mr. Hyland inquired as to when it was anticipated for the school to move into the new facility. Ms. Leiss stated that the synagogue had not yet begun construction. She stated that it would be about two years but that construction was a big question mark.

Mrs. Day inquired about the number of cars coming between 9 A.M. and Noon. Ms. Leiss stated there were approximately 25 cars. Mrs. Day stated that if the first class left and another group arrived, how many cars came at that time. Ms. Leiss stated that there were only 5 to 7 cars at that time. Mrs. Day inquired if the cars stayed. Ms. Leiss stated that the parents dropped off the children and left. Mrs. Day stated that was a lot of traffic. Ms. Leiss stated that there were two children dropped off per parent. Mrs. Day stated that the synagogue had a lot of other activities there also.

Mr. Hyland inquired as to the hours of operation and was informed the school operated five days a week from 9 A.M. to Noon for three classes and from 9:15 A.M. to 3:15 for one class. Mr. Hyland inquired as to the overlap with the religious school. Ms. Leiss stated that the religious class did not begin until 4:15 so there was not any overlap. She stated that they did not use the same building. Ms. Leiss stated that a group of senior citizens used the school building. The religious school used the main building from 4:15 for about three to four days a week.

There was no one else to speak in support of the application. The following person spoke in opposition. Mr. William Bryson of 3821 Chantal Lane, lot no. 17, was the owner of the corner lot behind the synagogue. He stated that he represented the Sunny Hills and Skybrook communities. Mr. Bryson stated that they were aggravated with the unauthorized use of the synagogue and the preschool. Mr. Bryson stated that the fact the preschool was not under a special permit had come out at the hearing in January and February regarding the synagogue. After those hearings, the citizens had asked the Zoning Enforcement Division to investigate the matter. After four or five calls with Mr. Kennedy, he was informed that the investigation was completed and the preschool would have to be closed. Mr. Bryson stated that the preschool had never closed and had finished the school year. In the Fall, they reopened the school without a special permit. Mr. Bryson stated that it was not strange. It had been promised and was not done. He stated that the synagogue had ignored the authority and continued on its way.

Mr. Bryson stated that the Olam Tikvah preschool was not an asset to the community as there were other preschools in the area without full enrollments. Mr. Bryson stated that this special permit application did not satisfy Section 8-305 of the County Code. He stated that Glenbrook Road did not have sufficient right-of-way. There were not any pedestrian facilities and the road was less than 18 ft. in width. Mr. Bryson stated that Glenbrook Road was a country lane and was not a local street as defined in the Ordinance. He stated that it was very dangerous to exit onto Rt. 236. Chairman Smith inquired if Mr. Bryson was aware that the Zoning Administrator had indicated that Glenbrook Road was a local street and met the standards. Mr. Bryson stated that the staff report had been written by someone with rose colored glasses. Mr. Hyland inquired as to Mr. Bryson's position on why Glenbrook Road was not a local street when the Zoning Administrator had determined that it was. Mr. Bryson stated that the definition of a local street in the Ordinance did not give the width. However, he felt a local street was approximately 34 ft. in width and Glenbrook Road was less than 18 ft. Mr. Hyland stated that Mr. Bryson had already given the Board that information. Chairman Smith stated that there were many local streets in the County that were only 16 ft. to 18 ft. in width and they were considered local streets. Mr. Covington informed the Board that this was actually a collector street. Mr. Yaremchuk stated that it was only a local street. He stated that there was no way to make this a collector street. Mr. Bryson stated that a collector street was allowed to have speeds of more than 25 m.p.h. He stated that exiting on Rt. 236 was very dangerous as you had to enter traffic going at least 50 m.p.h. He stated that you had to go across two lanes of traffic before entering the other lanes.

Mr. Bryson stated that the alternative path was to travel through the six stop signs and seven streets of Skybrook. They were very short streets. Even on these streets, there were not any pedestrian facilities. Mr. Bryson stated that these streets were even more dangerous to the children. Mr. Yaremchuk stated that he had sat through this testimony previously. He stated that if the synagogue had come before the BZA originally, they would not have had a chance as it was a bad situation. Mr. Yaremchuk stated that the school was church related and that almost every church in the County had a preschool. Mr. Yaremchuk inquired if the neighbors had petitioned the Board of Supervisors to have Glenbrook widened. Mr. Schiavone stated that Glenbrook Road was a state road. Mr. Yaremchuk stated that it did not matter as the Board of Supervisors controlled the money for improvements. Mr. Yaremchuk stated that the citizens could petition the Board as it was a bad situation and it had not improved. He believed that the road could be widened as traffic was going to continue and the citizens would not be able to stop it. He stated that they should have the Board look at this segment of the road. Mr. Bryson stated that he would like to respond to that in another fashion. He asked the BZA to limit the activities of the synagogue. He stated that the Jewish Community had recently purchased the Commonwealth School on Rt. 236 and that the preschool could be moved to that location. He stated that the citizens did not want the preschool

239

239

on Glenbrook Road as it was causing a lot of problems. Mr. Yaremchuk stated that in his opinion, the school was not the problem. It was the synagogue. Mr. Yaremchuk stated that he had seen the pictures. However, he stated that if the preschool were limited, there would still be a lot of traffic problems as far as the synagogue. Mr. Yaremchuk stated that the only problem was where the synagogue was located.

Mr. Bryson stated that the children of the community had to walk to school. The 140 daily trips to the synagogue were excessive. Mr. Bryson stated that had been included in the request. Mr. Bryson stated that he had personally counted vehicles only during the morning hours and had counted 64 cars. Mr. Bryson stated that Glenbrook Road was a dead-end street. He stated that the daily traffic for the synagogue was closer to 200 vehicle trips per day. Mr. Yaremchuk stated that was not for the school alone. Mr. Bryson stated that there were 50 children in the morning and 50 children in the afternoon. Mr. Hyland stated that there were 32 cars in the morning and 32 back out in the morning. He stated that a similar count would occur at noon. Mr. Bryson stated that he had subtracted for the teachers' cars.

Mr. Bryson stated that the playground area did not meet the requirements of paragraph 1 of Section 8-305 allowing 100 sq. ft. of usable space per child. Mr. Bryson stated that the playground should not take up the front yard. He informed the Board that the playground was in the front yard and that the synagogue had been told to move it. They had not moved it yet. Mr. Bryson stated that there was an area fenced off at the side of the school which was not shown on the plat. Mr. Bryson stated that the plats were not correct. Mr. Bryson stated that even assuming only one class at a time would go out to the playground, there still was not enough square footage. Mr. Hyland inquired as to the inadequacy of the playground. Mr. Bryson responded that the playground fence was very poorly put up. It was not a chain link fence. It had a poor gate and it opened to the front towards Glenbrook Road. Mr. Hyland stated that excluding the front yard, what was the available space and the dimensions. Mr. Bryson stated that he had counted it off and there was no more than 1,000 sq. ft. If it excluded the front yard, the playground would take care of ten children.

Mr. Bryson informed the Board that the synagogue expansion was significant. He stated that what was important was that the preschool was not included in the plans. He stated that a preschool should have an area immediately accessible. The present preschool location would be the caretakers' home in the future. With the expansion of the main building and the parking lot, it left no land for the playground. Mr. Bryson stated that the situation would only become worse.

Mr. Bryson recommended that the BZA disapprove the special permit because it was in violation of Section 8-305 of the Ordinance. Mr. Bryson stated that the neighborhood children were in danger because of the traffic. He stated that the synagogue had art shows, bridge tournaments, etc. The synagogue was to be for no more than 120 families in 1973. The current number of families was 600 and still growing. Mr. Bryson stated that the synagogue was a tremendous nuisance to the area. Mr. Bryson stated that the synagogue planned to move the preschool into the main building. The school could be expanded to 250 which was the maximum that was placed on the facility at the spring hearing. Mr. Bryson stated that would allow 700 car trips daily. Mr. Bryson stated that the County Code was established to protect the area. It set forth procedures for safety for all concerned.

Mr. Hyland stated that Mr. Bryson had indicated that the school was an inconvenience and an aggravation to the community. Mr. Hyland stated that he was quite familiar with the issues that had been raised. He asked Mr. Bryson to put those issues aside and address himself specifically to the preschool which had been operating since 1973. Mr. Hyland inquired as to what problems the preschool had created for the community. He asked if it was a combination and in concert with the synagogue which has created the problem. Mr. Hyland stated that to his knowledge, there was not any complaint about the preschool. Mr. Bryson stated that Mr. Hyland was correct. He stated that when the citizens had seen that the Jewish community purchased the school on Rt. 236, they thought the preschool would be moved there. He stated that they were not aware of the special permit. Mr. Bryson stated that the biggest complaint was the traffic. At 4 o'clock, there was another 100 to 150 cars entering the street. Mr. Bryson stated that they understood the true religious school but this was not a true religious school.

During rebuttal, Mr. Richard Stahl, attorney for the preschool and the synagogue, informed the BZA that up until this year, the school was not aware that there was any requirement for a special permit. Mr. Stahl stated that was very important. There had not been any attempt to thwart the County requirements. Inspections had been made ever since the school opened. No one had ever asked for a special permit number. Mr. Bryson stated that the matter had not come up until the synagogue tried to expand. Ms. Leiss had dealt with the school situation. At no time was there any letter received directing the school to be closed down. Mr. Stahl stated that the citizens were concerned about the activities of the synagogue. Mr. Stahl stated that he believed the public school was in session prior to the 9 A.M. opening of the preschool. The same was true for dismissal. Mr. Stahl stated that the concerns of Mr. Bryson were to the afternoon religious school.

240

Mr. Yaremchuk inquired as to the effect the school on the community with 64 cars coming and going. Mr. Stahl stated that there were only 7 cars in the afternoon. Mr. Yaremchuk stated that the traffic was there four times a day. Mr. Yaremchuk stated that Mr. Bryson had not picked a figure out of the air. There were 200 cars on the property between 9 A.M. and 3:15 P.M. Mr. Stahl stated that the preschool had 40 children in the morning. Mr. Hyland stated that was the point that confused him. He had received testimony that there were two children per vehicle. That would allow 20 cars in the morning and 20 again in the afternoon. There were two classes, so it would be a total of 80 cars with 10 more in the afternoon. Mr. Yaremchuk inquired as to where Mr. Bryson had gotten the count of 34 cars. Mr. Bryson stated that there were 34 cars and not 25 going in and out. Mr. Bryson stated that on a daily basis, that would be approximately 200 cars.

Mr. Yaremchuk asked Mr. Bryson to concede that there were only 140 cars going in and out. He stated that he did not know of any local street that generated that much traffic. Mr. Yaremchuk stated that he lived on a local street and it did not have that much traffic. Mr. Yaremchuk stated that was a lot of traffic to have to tolerate.

Mr. Stahl stated that with respect to the playground, it had been dealt with extensively at the earlier hearings. On the northwest corner of the property, Mr. Montgomery had objected to the relocation of the playground and it had been moved to a northeast area of the property The major play area would be negotiated between the building plans. Mr. Stahl stated that the reason the playground was in the front was because there was an embankment and Glenbrook Road was a dead-end. There had not been any complaints about the play area. Up until this year, the school had never been a source of complaint or problem in the area. Mr. Stahl asked the Board to approve the special permit.

Mrs. Day stated that testimony had been given that the synagogue had purchased the property on Rt. 236 and she inquired as to the plans. Mr. Stahl responded that the Jewish Community Center was what the name suggested. It was not part of any synagogue and was a separate institution. At present, it did not have the facilities to house a preschool. The center had not been established yet. Mr. Stahl stated that the center was not associated with any one branch of the Jewish faith. Mrs. Day inquired if it would be possible to eliminate the bridge tournaments, etc. and have them set up in the community center. Mr. Stahl stated that the art show was conducted by the ladies auxiliary as an annual fund raising for the synagogue. With regard to the bridge, when it was found out that it was not permissable, the contract was cancelled. However, there was a time lag to terminate the use.

Mrs. Day stated that there was a traffic problem and the BZA had responsibilities both to the applicant and the community. Mr. Stahl stated that since January of this year, efforts had been made to inform all of the members of the congregation about speed limits and observing the regulations strictly. At the time of the high holy days, the synagogue had arranged to have a uniformed officer to ease the traffic onto Rt. 236. This year, the synagogue had used the church across the highway for additional parking. Mrs. Day stated that she was certain the synagogue was concerned about the situation but were unable to control it. Mr. Stahl stated that he had received a letter from a neighbor to which he had not been able to respond. Mr. Stahl stated that the synagogue tried to be cognizant and respond to the citizens. Mr. Stahl stated that there were other fund raisers throughout the year but the only weekly activity was Bingo. He stated that it was controlled. Mr. Yaremchuk asked for Mr. Stahl's opinion as to whether if the BZA approved the special permit for the preschool whether it would compound the situation from a traffic standpoint. Mr. Stahl stated that there would not be any change. The preschool was not expanding. Even when it was relocated to the new facilities, there were not any plans for expansion.

Mr. Yaremchuk stated that everyone was aware of the traffic situation. He asked Mr. Stahl if the citizens and the synagogue should petition the Board of Supervisors to have something done with the road. Mr. Yaremchuk stated that he understood the synagogue had 640 families attending services. Mr. Stahl stated that the congregation consisted of 500 families. Mr. Yaremchuk inquired if the synagogue had any plans to work with the citizens to improve the road situation. The school had existed since 1973. Something had to be done as far as the traffic was concerned. Mr. Stahl stated that the synagogue had not done anything to this point as the citizens would oppose the widening. Mr. Stahl stated that he had no problem with widening but he envisioned the citizens opposing it.

Mrs. Day stated that she felt if the preschool moved elsewhere, it would solve a lot of problems. However, the BZA had a responsibility to both sides. Therefore, she moved that the special permit be deferred for a complete study of the other uses associated with the property to be conducted by the Zoning Administrator's office in conjunction with the other departments. Mr. Yaremchuk seconded the motion. Mr. Yaremchuk stated that what he had in mind was the Zoning Administrator explore the possibility of widening Glenbrook Road with the synagogue and the community. He stated that there had to be a solution. If the BZA approved the school, it would only compound the problem. Mrs. Day stated that it would not hurt to explore the feasibility of widening Glenbrook Road. Chairman Smith stated that a study would have to be devised by the Transportation Office as to how they wanted to do it. Mr. Hyland stated that he did not wish to oppose the motion but he was prepared to make his decision this evening. He did not think the study was going to give the BZA anything that they were not already aware of. He was prepared to assume the worst possible number of vehicle trips. Mr. Hyland stated that if the Board did the study and it was going to be

241

responsible to the BZA that any conclusions to be given be presented to both sides for their reactions to the conclusions. Mr. Hyland stated that he hoped the BZA would be presented with a position in writing. Mr. Yaremchuk stated that he did not want the study just to be studied. He was serious about the problem as the situation was bad. He thought the two parties should be gotten together to resolve it.

Chairman Smith stated that he had no problem with allowing it for three years. To do anything else would be unfair to the community. Mrs. Day stated that if it was unfair to the community, why continue it. The vote on the motion to defer passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

//

Page 241, November 17, 1981, Scheduled case of

8:45 P.M. FIRST ASSEMBLY OF GOD, appl. under Sect. 3-303 of the Ord. for construction and operation of a church and related facilities, located 5225 Backlick Road, 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-078.

As the required notices were not in order, the special permit was deferred until December 8, 1981 at 1:00 P.M.

//

Page 241, November 17, 1981, Scheduled case of

9:00 P.M. ANNANDALE-SPRINGFIELD CHRISTIAN ACADEMY, appl. under Sect. 3-303 of the Ord. for a private school of general education and child care center, located 5225 Backlick Rd., 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-079.

As the required notices were not in order, the special permit was deferred until December 8, 1981 at 1:10 P.M.

//

Page 241, November 17, 1981, After Agenda Items

BZA Scheduling: The Clerk informed the BZA that it needed to decide whether it wanted to eliminate its night meeting in December. It was the consensus of the Board to leave the schedule at it was.

// There being no further business, the Board adjourned at 10 o'clock.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith, Chairman

Approved: July 12, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, November 24, 1981. Four Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; and Ann Day. Gerald Hyland was absent.

The Chairman opened the meeting at 11:00 A.M. led with a prayer by Mrs. Day.

The Chairman called the scheduled 10 o'clock case:

10:00 A.M. LAWRENCE LINDSAY ROSEN, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's determination that chickens are not "commonly accepted pets", and may not, therefore, be kept on residential property less than two (2) acres in area, located 6343 Nicholson St., 51-3((13))64, Mason Dist., R-3, 30,527 sq. ft., A-81-M-011.

The Chairman stated that in view of the fact that there were only four Board members present, the Board would not be able to hear the application. He stated that it was the Boards' policy not to hear an appeal without a full five-member board. The appeal was deferred to December 1, 1981 at 11:30 A.M.

//
Page 242 ,November 24, 1981, Scheduled case of

10:30 A.M. JOHN E. & SHIRLEY A. HEWITT, appl. under Sect. 18-401 of the Ord. to allow construction of deck 16.9 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-307 & 2-412), located 12501 Lt. Nichols Rd., Fair Oaks Estates Subd., 45-2((6))249, Centreville Dist., R-3(C), 10,924 sq. ft., V-81-C-170.

The Chairman stated that there was a request to withdraw the application.

Mr. Yaremchuk moved that the Board withdraw the application without prejudice. Mr. DiGiulian seconded the motion. The motion was unanimous.

//
Page 242 , November 24, 1981, Scheduled case of

10:40 A.M. THOMAS F. JARAS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard and 19 ft. min. rear yard req. by SEcts. 3-107 & 2-412), located 1091A Pensive Ln., 12-4((7))39A, Dranesville Dist., R-1(C), 22,740 sq. ft., V-81-D-200.

The Chairman stated that the notices were not in order and the application could not be heard today. The case was deferred to January 19, 1982 at 10:00 A.M.

//
Page 242, November 24, 1981, Scheduled case of

10:50 A.M. HERBERT H. WRIGHT, appl. under Sect. 18-401 of the Ord. to allow construction of carport addition to dwelling to 3.9 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-410), located 7212 Masonville Dr., 60-1((29))224, Mason Dist., R-3, 46,825 sq. ft., V-81-M-202.

The Chairman stated that the notices for this application were not in order. The application was deferred to January 19, 1982 at 10:10 A.M.

//
Page 242, November 24, 1981, Scheduled case of

11:00 A.M. L. DOUGLAS LEE & BARBARA A. LEVINSON-LEE, appl. under Sect. 18-401 of the Ord. to allow 6 ft. high fence within the min. req. front yard contiguous to a pipestem driveway (4 ft. max. height for a fence in any front yard req. by Sect. 10-105, located 9100 Wexford Dr., 28-4((27))22, Centreville Dist., R-3(C), 12,149 sq. ft., V-81-C-201.

Mr. L. Douglas Lee, the applicant, at 9100 Wexford Drive, Vienna, appeared before the Board. He stated that there were four points that related to his hardship justification. The first was considerable financial hardship that would result if the request was not granted; (2) the fact that he was not aware that he was in violation of the Zoning Ordinance at the time of construction; (3) he has an unattractive public nuisance in his backyard which

243

makes the fence desirable from the public safety point of view, and from the point of view of protecting children playing in the backyard; (4) the fence does not interfere with vehicle traffic. Additional points that Mr. Lee made were that his house was sited in 1979 before the Ordinance in question was passed. He stated that by the Ordinance standards, he did not have a side yard at all. His lot was one of two in the neighborhood along a pipestem driveway. The applicant presented a statement to the Board regarding the fact that his neighbors do not have any objection to the fence.
Mrs. Day asked if the neighbor who uses the pipestem had any objection. Mr. Lee stated that a complaint was made by this neighbor before the fence was installed. A fence company that was hired put the posts in the ground, and that was when the neighbor called the Zoning office. He stated that the neighbor does not object anymore, and they wished that they could withdraw the complaint.

Mr. DiGiulian asked if that particular neighbor had signed the statement just presented to the Board. Mr. Lee replied that they had not signed it, and that he had not spoken to them recently.

The Chairman asked if Mr. Lee was told prior to the installation of the fence itself that it was in violation. Mr. Lee said he was told after the fence posts were in and before the fence itself had been erected that it was in violation. Mr. Mr. Lee called the fence company to postpone the installment of the fence, he was told he would have to forfeit 50% of the amount of the fence if he cancelled the order.

The Chairman asked if Mr. Lee was aware that if the fence company had a home improvement license in the County they put that license in jeopardy if they built in violation of the County Ordinance. Mr. Lee replied that he was not aware of this. Chairman Smith stated that there was basis for negotiation of the contract with the fence company.

The Chairman asked Mr. Lee why a four foot fence wouldn't suffice. Mr. Lee replied that they have a large dog and also, they wanted to protect their children from the pipestem driveway. He felt the children could climb over a four foot fence.

Mr. DiGiulian asked Mr. Covington what the required setback was from the pipestem to the dwelling. Mr. Covington replied that it was 25 feet.
There was no one to speak in favor of the application and no one to speak in opposition to the application.

Page 243, November 24, 1981 Board of Zoning Appeals

L. DOUGLAS LEE & BARBARA LEVINSON-LEE

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Application No. V-81-C-201 by L. DOUGLAS LEE & BARBARD LEVINSON-LEE, under Section 18-401 of the Zoning Ordinance to allow 6 ft. high fence within the min. req. front yard contiguous to a pipestem driveway (4 ft. max. height for a fence in any front yard req. by Sect. 10-105), on property located at 9100 Wexford Drive, tax map reference 28-4((27))22, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 12,149 sq. ft.
4. That the applicants' property has an unusual condition in the location of the existing buildings on the subject property being located 10 feet closer to the property line than required by the Ordinance.

R E S O L U T I O N

244

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent).

Page 244, November 24, 1981, Scheduled case of

11:10 A.M. FREDERICK W. & LINDA L. EBHARDT, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5 ft. from side lot line such that total side yards would be 20.4 ft. (8 ft. min. but 24 ft. total min. side yard req. by Sect. 3-207), located 15019 Carlbern Dr., 53-1((2))(10)13, Springfield Dist., R-2(C), 10,794 sq. ft., V-81-S-203.

Mr. Frederick W. Ebhardt of 15019 Carlbern Drive, Centreville, presented the facts for his application. His justification for his application was the drainage problem he has in the rear of the yard. He stated that he would incur a lot of expense for drainage if he located the garage in the back of his house. He also stated that there was quite a bit of landscaping done in the back of his house; a shed, a 20 ft. high tree, and a gravel pathway because of the drainage problem. At the end of the driveway there is a large pine tree. He stated that his property was unique in that there are only two or three houses in the entire development with a driveway going to the side where the basement door is. He stated that it would be more feasible for him to put the garage in this location because of the basement door leading to the garage.

Mr. Yaremchuk asked the applicant to elaborate on the drainage problem. Mr. Ebhardt gave Mr. Yaremchuk a sketch he had done of his property. He stated that the only drain he had was one that went up under his neighbors driveway. He also stated that his neighbor didn't object to the garage addition.

There was no one to speak in favor of the application and no one to speak in opposition to the application.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Application No. V-81-S-203 by FREDERICK W. & LINDA L. EBHARDT under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 5 ft. from side lot line such that total side yards would be 20.4 ft. (8 ft. min. but 24 ft. total min. side yard req. by Sect. 3-207), on property located at 15019 Carlbern Drive, tax map reference 53-2((2))(10)13, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

245

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 10,794 sq. ft.
4. That the applicants' property has an unusual condition in the location of the existing buildings on the subject property and it has a drainage problem and would not be feasible to locate the garage in the back yard.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent).

Page 245, November 24, 1981, Scheduled case of

11:20 A.M. STANLEY SACHA, appl. under Sect. 18-401 of the Ord. to allow construction of a two-car garage addition to dwelling to 6.34 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 3802 Lakota Rd., Burgundy Farm Subd., 82-2((5))(F)37, Lee Dist., R-3, 10,506 sq. ft., V-81-L-206.

Mr. Stanley Sacha, of 3802 Lakota Road, Alexandria, presented his application. He stated that there are two items that make this garage location necessary. The lot size is only 10,506 sq. ft. and compared to other lots it is relatively small. The other consideration is the fact that the side lot lines converge. The east lot line does not run directly north and south as the west lot line does. These two unusual lot conditions necessitate this variance. He also stated his neighbors fully support his request for variance as shown by a petition he included with his application. Mr. Sacha stated that he has tried to minimize the variance by proposing a double garage of minimum width; 21 feet. He stated that he needed a two-car garage because his house does not have a basement or useful attic space. He said he has three children and needs the extra room.

There was no one to speak in favor of the application and no one to speak in opposition to the application.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Application No. V-81-L-206 by STANLEY SACHA under Section 18-401 of the Zoning Ordinance to allow construction of a two-car garage addition to dwelling to 6.34 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 3802 Lakota Road, tax map reference 82-2((5))(F)37, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,506 sq. ft.
4. That the applicants' property is exceptionally irregular in shape and small in square footage, has an unusual condition in the location of the existing buildings on the subject property, the east side lot line does not bear straight north and south, and the applicant has converging lot lines making this the only feasible location.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent)

Page 246, November 24, 1981, Scheduled case of

11:30 A.M. CHILDREN'S WORLD, INC., appl. under Sect. 3-103 of the Ord. for a child care center (approx. 128 children), located intersection of Oak St. (Rt. 769) and Arden St. (Rt. 3450), 39-4((1))108A, Providence Dist., R-1, 87,120 sq. ft., S-81-P-073.

Mr. Grayson Hanes, 4084 University Blvd., Fairfax, represented the applicant. He stated that they were applying for a use permit for the operation of a day school for children between the ages of 1 1/2 or 2 to 6 years old. He stated that the Children's World, Inc. has acquired and is building at the present time three other sites in Fairfax County. This corporation is the fourth largest corporation in the world building day care centers. It has 98 sub-centers throughout the United States.

Mr. Grayson stated that the property they were concerned with today contains two acres and it is zoned in the R-1 district. It is surrounded by an R-3 residential zone on the east, with houses constructed on that property. Property to the west is a bit older and the area appears to be somewhat in transition. There are some new homes also to the north.

Mr. Grayson stated that the structure itself that will be built is a one-story structure. The builder has tried to put a residential-looking structure in the neighborhood so that it blends with the character of the neighborhood. It is a wood building built on a slab.

Mr. Grayson stated that they had the approval of the Health Department for the occupancy of 128 children. The hours would be between 6:30 A.M. and 6:30 P.M. There will be approximately 15 employees including a cook and a director. There are 19 parking spaces on the plat, and there are adequate outdoor spaces. Mr. Grayson stated that according to the Ordinance, they have been required to comply with the screening requirements of the county. He stated that they were asking for some waivers on that from DEM.

Mr. Grayson stated that along the frontage of the property on Oak Street they will be constructing sidewalk, curb, and gutter, and will tie it in to the existing curb and gutter from the adjoining subdivision. There will be a six foot fence between the easterly property line and the structure. At the point where the fence reaches Arden Street it will become four feet high.

Mr. Grayson stated that the use has been specifically designed to be residential in appearance. Every attempt possible to retain the trees on the property will be made.

The next speaker was Michael Harper of 2292 Shawn Court, which is three doors down from the site in question. He spoke in opposition to the application.

Mr. Harper stated that some of the local residents had signed a petition. He presented the petition with 48 signatures on it to the Board members. He stated that if the property is zoned residential, there's quite a difference between a residential dwelling and a residential-looking dwelling. He stated that this is a commercial facility in the business to make a profit. He stated that there will be a lot of activity going on there early in the morning and late at night. Basically, the neighbors objections are the fact of the commercial aspects of the proposed facility, and the possible side effects. Mr. Harper stated that this facility will bring in noise, lights, traffic, signs, etc. which do not fit in with the residential character of the neighborhood. He stated that if the neighbors didn't stand up against this type of thing now, other people would petition to put up other commercial enterprises in that area.

Mr. Harper stated that he thinks the reason that this lot was selected was because there are stronger economic incentives to try to occupy a residential piece of land than a commercial piece of land. He stated that there is plenty of vacant land in a commercial zone down on Gallows Road that is not developed yet. He also stated that it was probably very expensive, and to buy land in a residential area the corporation would save a great deal of money on land.

The next speaker to speak in opposition was Elizabeth Black who owns the property directly opposite Oak Street. She stated that she was also speaking for Mr. & Mrs. Vasbinder and Mr. Nelson who occupy the other two corners of the property. Mrs. Black presented the Board members with a copy of the resolution from the Dunn Loring Improvement Association.

The Chairman told Mrs. Black that he would like to point out that this was not a re-zoning hearing, it was a request under a special use permit.

Mrs. Black stated that when she received her notice, there was no indication which corner the application was referring to. She stated that the yellow sign was posted so that it indicated Mr. Nelson's property. It was not posted on the correct property, it was posted on the opposite corner.

The Board recessed to give Mrs. Hicks an opportunity to contact someone about the posting of the property.

The meeting re-convened a few minutes later. The Chairman stated that it would take some time to verify the posting since the person that posted the signs was not available.

Page 248, November 24, 1981
CHILDREN'S WORLD
(continued)

Mr. Grayson stated that for clarification, he had gone out to the property that morning, and it was on the wrong property at that time.

The Chairman stated that the hearing would have to be curtailed, and the posting and advertising procedures would have to be re-done. He stated that the Board could not legally hold a hearing on the application since the procedure was not followed correctly. The Chairman stated that the Clerk to the Board of Zoning Appeals would send out the notices.

The hearing was deferred to January 5, 1982 at 11:45 A.M.

(ALSO REFER TO VERBATIM TRANSCRIPT ON FILE IN THE CLERKS OFFICE)

Page 248, November 24, 1981, Scheduled case of

11:45 A.M. MOBILE OIL CORPORATION, appl. under Sect. 18-401 of the Ord. to allow construction of new service station bldg. 1 ft. from rear lot line (20 ft. min. rear yard req. by Sect. 4-807), located 5863 Richmond Hwy., 83-4((1))9, Mt. Vernon Dist., C-8, 0.45611 acres, V-81-V-147. (DEFERRED FROM 11/3/81 FOR SPECIAL EXCEPTION).

Mr. Bob Lawrence, an attorney in Fairfax, represented the applicant. He stated that previously the applicant had gone before the Board of Supervisors and the Planning Commission to get a Special Exception permit. He stated that essentially what the applicant was doing was just modernizing the station. He stated that the intensity of the station would not be increased. A new building would be put up to replace the old one, and some gas pumps would be taken out and some re-arranged. He stated that they are trying to reduce the number of gas pumps and reduce the number of entrances.

Mr. Lawrence stated that because of the grandfather aspects of the site the applicant was required to go before the Board of Supervisors for a Special Exception permit. He stated that the Planning Commission gave a favorable recommendation and the Board of Supervisors approved it. He stated that the Rt. 1 Development Corporation was also consulted and they recommended the approval of the application.

The Chairman asked Mr. Lawrence to justify the hardship under Sect. 18-401 of the Ordinance.

Mr. Lawrence stated that the property was only 24,421 square feet in size and there is no flexibility because of the configuration of the property, and the orientation towards the two roads that intersect at this point. The building itself is just being turned in a little bit of a different direction. He stated that the property was not reduced in size since the adoption of the Ordinance. He also stated that to not allow this permit would create a hardship because the building would have to be reduced in size, and there would be no real benefit to the public by reducing it.

Mr. Lawrence stated that this particular application is a little different from others that are heard because it has the scrutiny of the planning staff and a review for the Special Exception permit. Also, the Department of Environmental Management had to review the question of whether or not there was any problem with the set-back from the rear property line.

The Chairman asked how many bays were in the facility. Mr. Lawrence stated that there were still only two bays in the facility. He stated that the building would be almost exactly the same size.

The Chairman asked if the same style building would be used. Mr. Lawrence replied that it would have a more modern facade. He stated that Mobile Oil was in the process of remodeling a lot of stations in the area.

The Chairman asked which pump islands would be removed. Mr. Lawrence replied that the Hunt Road pump islands would be removed. He also stated that it was being converted to a self-service operation. The canopy that will be put in is to provide convenience to the patrons.

Mr. Lawrence stated that Mobile Oil had permission from the owners of the property the motel is located on to provide landscaping between the service drive and the property line.

There was no one to speak in favor of the application and no one to speak in opposition to the application.

249

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Application No. V-81-V-147 by MOBILE OIL CORPORATION under Section 18-401 of the Zoning Ordinance to allow construction of new service station building 1 ft. from rear lot line (20 ft. min. rear yard req. by Sect. 4-807), on property located at 5863 Richmond Highway, tax map reference 83-4((1))9, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-8.
3. The area of the lot is .45611 acres.
4. That the applicants' property is exceptionally irregular in shape.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 0 with 1 abstention (Mr. Yaremchuk) (Mr. Hyland being absent)

Page 249, November 24, 1981, Scheduled case of

12:00 NOON DONALD M. & MARY L. SIMPSON, appl. under Sect. 18-406 of the Ord. to allow carport to remain 4.5 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 & 2-412), located 7902 Penn Pl., Hollin Hall Subd., 102-2((2))(17)30, Mt. Vernon Dist., R-3, 12,105 sq. ft., V-81-V-146. (DEFERRED FROM 11/3/81 FOR PRESENTATION BY APPLICANT OR AFFIDAVIT).

The Chairman stated that the Board received an affidavit from Mr. Simpson regarding the variance.

Mrs. Day made a motion to defer the application for six months due to the physical condition of the applicant. She stated that there shall be no activity in that portion of the property which does not conform to the code. This would give the applicant the opportunity to make the necessary changes to meet the conditions of the code.

Mr. DiGiulian seconded the motion.

The Chairman deferred the application to May 25, 1982 at 10:00 A.M.

250

AREA LANDSCAPING, INC.: The Board was in receipt of a request from Mr. Byron Wates for an out-of-turn hearing on a variance application. It was the consensus of the Board to schedule the application on December 15, 1981 at 8:55 P.M.
//
Page , November 24, 1981, After Agenda Items

GARY STEVEN IBACH: The Board was in receipt of a request for an out-of-turn hearing on a variance application. It was the consensus of the Board to schedule the application at the normal time.
//
Page , November 24, 1981, After Agenda Items

ARLINE BLAKE IMLER: The Board was in receipt of a request for an extension beyond the time granted for V-80-C-084. A 180 day extension had already been granted on May 5, 1981. It was the consensus of the Board to deny the request.
//
Page , November 24, 1981, After Agenda Items

GEORGE B. HARTZOG, JR.: The Board was in receipt of a request for additional use of a Special Use Permit issued for an antique shop. It was the consensus of the Board that they had no right to grant any additional use without a public hearing.
//
Page , November 24, 1981, After Agenda Items

MICHAEL FANSHEL: The Board was in receipt of a request that Mr. Gilbert Knowlton and Mr. Vernon Ross Long attend a hearing on December 8, 1981 for an appeal application. It was the consensus of the Board that Mr. Fanshel should subpoena these individuals if he wanted to be sure they would attend the hearing.
//

There being no further business, the Board adjourned at 1:20 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on July 7, 1983

APPROVED: July 12, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 1, 1981. All of the Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

251

The Chairman opened the meeting at 11:00 A.M. led with a prayer by Mrs. Day.

The Chairman called the scheduled 10 o'clock case:

10:00 A.M. CHONG WOOK LEE, appl. under Sect. 18-401 of the Ord. to allow construction of tennis court, with 6 ft. & 10 ft. high fence surrounding it 15 ft. from the front lot line & 10 ft. from a side lot line (40 ft. min. front yard, 20 ft. min. side yard, and 4 ft. max. fence hgt. req. by Sects. 3-107 & 10-105), located 1173 Ballantrae Ln., 31-1((2))32F, Dranesville Dist., R-1, 43,771 sq. ft., V-81-D-204.

Mr. Chong Wook Lee, of 1173 Ballantrae Lane, McLean, presented the facts for his application. He stated that his family likes to play tennis. He said his working hours were very unusual, and it was hard for him to join any other tennis courts.

Mr. Hyland asked if the court would be lit. Mr. Lee replied that it wouldn't have any lights.

The Chairman asked why Mr. Lee couldn't turn his tennis court around close to the garage. By doing that, the Chairman stated that he would either have to build on the sewer easement or it would require very little variance. The Chairman also stated that it would appear that Mr. Lee was trying to over-build on his lot. He stated that there was a swimming pool on the other side of the house.

Mr. Lee stated that a regular-sized tennis court was 120 ft. x 60 ft. and that he was only asking for a court 110 ft. x 55 ft. He also stated that the fence would be 6 ft. and 10 ft. high.

Mr. Hyland stated that he had a copy of a letter from the file dated October 26, 1981. It was written to Mr. Lee from Mr. Stuart Terrett and it raised the question of the hold-harmless agreement suggesting that agreement should be amended to provide county maintenance personnel to have access to the sanitary sewer easement by traversing around the tennis court outside of said easement. Mr. Hyland asked if the hold-harmless agreement had been amended to reflect that. Mr. Lee stated that the information was in the file.

The next speaker was Mr. Harry Ormston, of 1170 Ballantrae Lane, directly across the street from the applicant's property. He spoke in opposition to the application. He presented a letter to the Board members from Samuel Neel, President of the Ballantrae Citizens Association. The letter stated that a tennis court located so close to Ballantrae Lane was not in keeping with the quality of the development that the Ballantrae Citizens Association has sought to maintain on all the residential lots in that area. In his letter, Mr. Neel stated that Mr. Lee could have located his tennis court behind his house, but has chosen to put a swimming pool there instead. He stated the Association does not believe the variance should be granted.

The next speaker to speak in opposition was James Lazar, of 1169 Ballantrae Lane, right next door to the applicant. He stated that there is a great deal of opportunity to play tennis in the vicinity of Ballantrae Lane, and that he objected to having a tennis court built in the front yard.

The next speaker to speak in opposition was Robert Carswell, of 1175 Ballantrae Lane, immediately to the south of the applicant's property. He stated that Mr. Lee was asking for over-utilization of his property. He stated that the tennis court would interfere with his family's peace and enjoyment of their property. He stated that it was dangerous to have tennis balls hitting cars and people, and said he didn't want the tennis players trespassing on his property to recover tennis balls. In addition, he stated that there was a noise factor to consider.

The next speaker to speak in opposition was Diana Carswell, the daughter of the previous speaker. She re-stated the same information her father had given, and submitted a letter to the Board regarding her feelings on the application.

During rebuttal, Mr. Lee stated that other neighbors on Ballantrae Lane have tennis courts. He stated that he did not want to be a nuisance to his neighbors, and he planned to have tall evergreen trees planted around the court to shield it from his neighbors.

252

RESOLUTION

In Application No. V-81-D-204 by CHONG WOOK LEE under Section 18-401 of the Zoning Ordinance to allow construction of tennis court, with 6 ft. & 10 ft. high fence surrounding it 15 ft. from the front lot line & 10 ft. from a side lot line (40 ft. min. front yard, 20 ft. min. side yard, and 4 ft. max. fence height req. by Sect. 3-107) on property located at 1173 Ballantrae Lane, tax map reference 31-1((2))32F, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 43,771 sq. ft.

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

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

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

Mrs. Day seconded the motion.

The motion passed by a vote of 5 - 0.

Page 252,December 1, 1981, Scheduled case of Board of Zoning Appeals

10:10 A.M. JAMES B. FERGUSON, appl. under Sect. 18-401 of the Ord. to allow construction of two-car garage, laundry room, and office addition to dwelling to 6 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 10713 Marlborough Rd., Country Club View Subd., R-1, 68-1((7))27, Annandale Dist., 22,000 sq. ft., V-81-A-207.

The first speaker was George Freeman, an attorney, representing the applicant. He stated that he had come with the applicant to add any necessary information needed.

The next speaker was James Ferguson, 10713 Marlborough Road, Fairfax, the applicant. He stated that the garage would be connected to the main house and this would be the only way he could have a two-car garage.

Mrs. Day asked what the office he was requesting would be used for. Mr. Ferguson stated the office would be used for nothing more than a file cabinet, a desk, and a telephone. He stated that the office would not be used for any retail trade and would not create any more traffic. He stated he had owned the property since 1963, and that this was a one-story addition he was making to his house.

The next speaker was B.R. Whitmore, or 10717 Marlborough Road, the next door neighbor of the applicant. He stated that he had no objection to the construction the applicant was going to do. He stated that he did not feel the construction would detract from the monetary value or the appearance of his property.

Page 252, December 1, 1981 Board of Zoning Appeals
JAMES B. FERGUSON

RESOLUTION

In Application No. V-81-A-207 by JAMES B. FERGUSON under Section 18-401 of the Zoning Ordinance to allow construction of two car garage, laundry room, and office addition to dwelling 6 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), on property located at 10713 Marlborough Road, tax map reference 68-1((7))27, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 22,000 sq. ft.
4. That the applicant's property has an unusual condition in that there is a drainage field located in the rear of the subject property, therefore there is not enough room to build in the rear of the property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 2. (Mr. Smith & Mrs. Day).

Page 253, December 1, 1981, Scheduled case of

10:20 A.M. FARAN & VIRGINIA MCCLIMANS, appl. under Sect. 18-401 of the Ord. to allow construction of a sunroom addition to dwelling to 16.1 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 9518 Heathwood Ct., Queens Gate Subd., 69-3((10))51, Annandale Dist., R-3, 10,185 sq. ft., V-81-A-208.

Mr. Dan Riems represented the applicant. He stated that the sunroom would be a 12 x 16.1 x 12 three-sided addition off of the family room. He stated that the property is on the back of a cul-de-sac and the construction would only be visible to one neighbor. He stated that the only way possible to meet the Ordinance requirements would be to located the sunroom behind the garage, which would not make it accessible to the family room. He stated that the lot is trapezoidal in shape.

Mr. Hyland asked who owned the property behind the house, and did they have any objections to the addition. Mr. Riems stated that it was owned by Fairfax County Park Authority, and as far as they knew, there were no objections.

There was no one to speak in favor of the application and no one to speak in opposition.

Page 253, December 1, 1981 Board of Zoning Appeals
FARAN & VIRGINIA MCCLIMANS

RESOLUTION

In Application No. V-81-A-208 by FARAN & VIRGINIA MCCLIMANS under Section 18-401 of the Zoning Ordinance to allow construction of a sunroom addition to dwelling to 16.1 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), on property located at 9518 Heathwood Court, tax map reference 69-3((10))51, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

254

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,185 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, in that it is trapezoidal, has an unusual condition in the location of the existing buildings on the subject property in that the applicant's dwelling is placed 12.1 ft. further to the rear of the lot than required, therefore causing a shallow rear yard line. In view of the fact that the proposed structure is at the rear of the property and that there is no objection from any abutting property owners.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 1. (Mr. Smith)

Page 254, December 1, 1981, Scheduled case of

10:30 A.M. KENNETH MALZI, appl. under Sect. 18-401 of the Ord. to allow brick terrace to remain 1.5 ft. from side lot line (4 ft. min. side yard req. by Sect. 3-407 & 2-412), located 4517 Weyburn Dr., Annandale Terrace Subd., 71-1((15))21, Annandale Dist., R-4, 13,032 sq. ft., V-81-A-209.

Kenneth Malzi, of 4517 Weyburn Drive, Annandale, presented his application. He stated that he was notified by Mr. Carpenter of the Zoning Office that he was in violation of the Ordinance after he had on two different occasions made inquiries with the permit section and the zoning section of Fairfax County. The first time he had contacted the county was in May 1981 before the terrace was built, and the second time was when a neighbor complained about it.

Mr. Malzi stated that he was advised to build a fence on his lot after his property was vandalized by some school children. When the fence was installed, he found out that from the slope of the property, no grass could be grown, therefore making the lot hazardous to walk on when it rained and because of the drainage.

Mr. Malzi stated that his neighbor didn't like the fact that water was being channeled onto his property. He stated that the current standing was that the drain was under the terrace and goes out through the front. With the construction of the terrace, the water filters through the bricks on the terrace. In response to a question from the Chairman as to why he didn't observe the 4 ft. setbacks, Mr. Malzi stated that it was more convenient just to level off the whole area. He also stated that he was not aware of the setbacks. He stated that when he spoke to people in permits and zoning, he told them of his intentions and the procedure he was going to use. He stated that they were aware that the patio would be flush against the fence.

255

Mr. Malzi stated that Sears installed the fence, and that the survey stakes were used. After the installation of the fence, the surveyors found that the stake had been moved onto his property line more than one foot. Mr. Malzi stated that consequently, the fence was not 1 ft. 5/10" on his property.

Mr. Malzi stated that he felt he was in his limits since he had previously spoken to people in zoning and permits. He stated that he was in the middle of construction of the patio when his neighbor challenged him on the set-back. He stated that after his discussion with his neighbor, his wife again called the Zoning Office.

Mrs. Day asked whether there was any water running over onto the neighbor's property. Mr. Malzi stated that the water drained through the patio, and no water was running onto his neighbors property.

The next speaker was Harry Heck, 7552 Medford Court, who spoke in support of the application. He stated that as far as the aesthetic look of the patio, it was an attractive construction. He stated that the drain pointed into Mr. Malzi's yard, not the neighbors yard.

The next speaker was Mrs. Malzi, the applicant's wife. She stated that she has slipped a few times before the patio had been built, because of the embankment that was there. She stated that she had talked to Mr. Schrinel in the Zoning Department and he had indicated they were within their rights to put the patio right up to the fence.

The Chairman asked Mr. Covington if he could possibly get Mr. Schrinel to come over to the Board Room to clear up the situation. While the Board members were waiting for Mr. Schrinel, they continued the hearing.

The next speaker was Albert Zushin, the next door neighbor, who spoke in opposition to the application. He stated that he informed Mr. Malzi when he started to construct the patio that he was in violation of the Zoning Ordinance. He stated that he had called the county and was informed of the setbacks. Mr. Zushin stated that he was concerned about the drainage of water onto his property. He stated that the placement and height of the patio is such that it greatly affects and re-directs the water flow under heavy downpour conditions. Mr. Zushin stated that a simple addition of a sidewalk where the patio is, would have been a good solution to Mrs. Malzi's problem.

The next speaker was Mr. Paul Schrinel. He stated that the recollection he had of this incident, the phone call, was that he may have at that time indicated to Mrs. Malzi that she could pave up to the lot line. He stated that he was under the impression that it was going to be a concrete slab. He stated that he had no knowledge of any wall or any other type structure being involved. He stated that he had since been informed by his supervisor that whether it is a concrete pad or not it is still a patio.

During rebuttal, Mr. Malzi stated that there was no definition of patio or terrace in the Zoning Ordinance. He stated that he was merely trying to level off a piece of his property and make it safe to walk on.

R E S O L U T I O N

In Application No. V-81-A-209 by KENNETH MALZI under Section 18-401 of the Zoning Ordinance to allow brick terrace to remain 1.5 ft. from side lot line (4 ft. min. side yard req. by Sect. 3-407 & 2-412), on property located at 4517 Weyburn Drive, tax map reference 71-1((15))21, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 13,032 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including narrow being 70 ft. wide and the land slopes higher to the rear; has exceptional topographic problems during the rainy season. The terrace does not drain onto a neighbors property and the terrace prevents the hazard of slipping in the rear yard due to slippery clay during rainy weather. Close neighbors have constructed similar terraces for safety reasons. The applicant previously talked to Zoning and was informed the terrace could be constructed to the fence line to level walk path.

RESOLUTION

256

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 1. (Mr. Smith)

Page 256, December 1, 1981, Scheduled case of

10:45 A.M. REGLA ARMENGOL - LA DANSE ACADEMY OF BALLET, appl. under Sect. 3-303 of the Ord. to amend S-272-78 for school of special education to permit continuation of the use for a new term, located 4319 Sano St., 72-2((1))20, Mason Dist., R-3, 4.677 acres, S-81-M-076.

The Chairman stated that the notices were not in order for this application. The application was deferred to January 19, 1982 at 10:20 A.M.

//

Page 256 December 1, 1981, Scheduled case of

11:00 A.M. THE POTOMAC SCHOOL, appl. under Sect. 3-103 of the Ord. to amend S-82-79 for private school of general education to permit a library building addition to existing facilities, located 1301 Potomac School Rd., 31-1((1))5 & 12A, Dranesville Dist., R-1, 70.065 acres, S-81-D-074.

The first speaker was Robert Rumph, the Business Manager of the Potomac School, who presented the application. He stated that the one story library addition that was being asked for would be attached to the existing building. He stated that the new 5,400 sq. ft. facility would be for the use of the students attending the school. He stated that the construction of the facility would not increase the number of students attending the school, the staff or the number of vehicles entering or leaving the school property, and it would have no foreseen adverse effects on the environment.

RESOLUTION

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-D-074 by THE POTOMAC SCHOOL under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-82-79 for private school of general education to permit a library building addition to existing facilities, located at 1301 Potomac School Road, tax map reference 31-1((1))5 & 12A, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 70,065 acres.
4. That compliance with the Site Plan Ordinance is required.

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

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. A copy of the 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 550.
8. The hours of operation shall be 8:30 A.M. to 3:30 P.M.
9. All limitations that were set in Application S-82-79 shall remain in effect.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 5 - 0.

Page 257, December 1, 1981, Scheduled case of

11:15 A.M. WILLIAM B. & DIANNE E. HARRAH, appl. under Sect. 3-103 of the Ord. to amend S-283-78 for home professional office (graphic arts) to permit continuation of the use without term, located 11718 Amkin Dr., Plantation Hills Subd., 86-3((5))7, Springfield Dist., R-1, 7.65130 acres, S-81-S-077.

The first speaker was Paul Terpack, an attorney with Blankenship & Key, who represented the applicants. He stated that there was no request for any change for the application that was granted in December 1978. He stated that the Harrah's have operated their home professional office since December 1978 with no complaints. Prior to that they operated a business similar to this one in Fairfax City for eight years with no complaints. He stated that the property in question was seven heavily wooded acres and that the house was not visible from the street. He stated that the operation included design layout and photo composition to make camera-ready copy which is then sent off the premises to be printed. Mr. Terpack stated that the main machine involved was no larger than an average xerox machine.

The next speaker was Dianne Harrah, the applicant. She stated that she had operated the same type of business in Fairfax City for eight years with no complaints. She stated that there were problems in coming back for a review periodically because of the problems the yellow signs caused with the neighbors and the financial responsibility of hiring an attorney and notifying the neighbors.

There was no one else to speak in favor of the application and no one to speak in opposition to the application.

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-S-077 by WILLIAM B. & DIANNE E. HARRAH, under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-283-78 for home professional office (graphic arts) to permit continuation of the use without term, located at 11718 Amkin Drive, tax map reference 86-3((5))7, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 7.65130 acres.
4. That compliance with the Site Plan Ordinance is required.

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

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. A copy of the 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This permit is subject to the provisions in S-283-78 except condition #10 is changed to read as follows: for a term of 5 years with the right to make three additional one year applications for extensions to the Zoning Administrator.
8. At the expiration of the five year term the applicant is required to make an application for extension to the Zoning Administrator thirty days in advance. Prior to the expiration of each one year term, application for extension should be made thirty days in advance to the Zoning Administrator.

Mrs. Day seconded the motion.

The motion passed by a vote of 5 - 0.

Page 258, December 1, 1981, Scheduled case of

11:30 A.M. LAWRENCE LINDSAY ROSEN, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's determination that chickens are not "commonly accepted pets", and may not, therefore, be kept on residential property less than two (2) acres in area, located 6343 Nicholson St., 51-3((13))64, Mason Dist., R-3, 30,527 sq. ft., A-81-M-011. (DEFERRED FROM 11/24/81 FOR DECISION OF FULL BOARD).

The Chairman stated that the Board of Zoning Appeals was in receipt of a letter requesting a deferral on this application. The case was deferred to January 26, 1982 at 8:00 P.M.

Page 259, December 1, 1981, AFTER AGENDA ITEMS:

STEPHEN N. KOTZIN: The Board was in receipt of a request from Stephen N. Kotzin for an out-of-turn hearing. There was a trial scheduled for this case, and the applicant wanted the BZA to hear it before the circuit court. It was the consensus of the Board to deny the request and schedule the application at the regular time. The application was scheduled for January 19, 1982.

//
Page 259, December 1, 1981, After Agenda Item

DR. LAWRENCE L. ZIEMIANSKI, DDS: The Board was in receipt of a request for a one-year extension of Dr. Ziemianski's special permit #S-80-D-035 granted in 1980. The Board of Zoning Appeals previously granted a six-month extension, which expires December 3, 1981. It was the consensus of the Board to grant a one-year extension. The motion passed by a vote of 4 - 1 (Mr. Smith).

//
Page 259, December 1, 1981, After Agenda Item

ENID LEISS: The Board was in receipt of a request about the guidelines on the deferral of the Olam Tikvah application. Mrs. Leiss asked if the pre-school would get a chance to speak again, how many people would get to speak and how much time they would get. The Board decided either the attorney or the applicant's representative could speak, and one person from the community. There would be 15 minutes for the pre-school and 15 minutes for the opposition to speak, plus questioning from the Board members. The Board also requested that a copy of the Staff Report be sent to Mrs. Leiss and Mr. Chivone.

//
Page 259, December 1, 1981, After Agenda Item

DONALD SIMPSON: The Board was in receipt of a letter from Mr. Hohein concerning the deferral of his neighbor's variance application. He stated that he was concerned about being able to speak at the next public hearing. It was the consensus of the Board that they would notify the parties involved prior to the hearing, and that Mr. Hohein would be heard prior to any action.

//
Page 259, December 1, 1981, After Agenda Item

SOUTHERN IRON WORKS: The Board was in receipt of a request for an out-of-turn hearing. It was the consensus of the Board to grant the request by a vote of 4 - 1 (Mr. DiGiulian abstained). The application was scheduled for January 5, 1982 at 12:00 NOON.

// There being no further business, the Board adjourned at 1:50 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on July 7, 1983

APPROVED: July 12, 1983
Date

260

A Special Meeting of the Board of Zoning Appeals was held in the Third Floor Conference Room of the Fairfax Building on Friday, December 4, 1981. The Following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 9:30 A.M. Other staff persons attending the meeting were: Gilbert Knowlton; Wallace S. Covington; Philip G. Yates; George Symanski; Jane C. Kelsey; David T. Stitt and Patrick Taves.

The purpose of the special meeting was to discuss the variance sections of the Ordinance and the BZA's authority in granting variance. Mr. Yates led the discussion by presenting the Board with excerpts from the Ordinance as well as proposed Ordinance amendments.

The agenda for the meeting was as follows:

1. Discussion in detail from beginning to end on the variance section of the Zoning Ordinance as to the BZA's authority.

2. Discussion on the BZA's authority under the State Code.

3. Discussion of solution regarding the acceptance of certain variance applications for provisions under the Zoning Ordinance which the BZA feels it does not have the authority to vary so as not to waste the applicant's or the Board's time in a public hearing.

4. Discussion regarding time frame involved in returning transcripts to the Circuit Court in appeal cases.

5. Any other matters of concern to the County Attorney, the Zoning Administrator or the BZA.

// There being no further business, the Board adjourned at 11:30 A.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: July 12, 1883

261

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 8, 1981. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk, Gerald Hyland and Ann Day.

The Chairman called the meeting to order at 10:10 A.M. and Mrs. Day led the prayer.

MATTERS PRESENTED BY BOARD MEMBERS

The Chairman asked if the Board Members had any matters to bring up before the meeting. Mr. Hyland stated that at the meeting the previous Friday, the Board has discussed handling matters that don't warrant consideration for an application of a variance because they don't meet criteria under the code of the Ordinance. Mr. Hyland issued his intent to make a motion to put this matter on the floor for discussion. The Chairman suggested that the matter be handled as as after agenda item if all five members were present at that time or wait until Mr. DiGiulian arrived.

Page 261, December 8, 1983, Scheduled case of

10:00 A.M. ANNUAL REPORT: Vulcan Quarries

The Chairman commended Mr. Gilbert Knowlton and Mr. Lenn Koneczny for the excellent detailed report submitted to the Board Members prior to the meeting.

Mr. Knowlton stated that Zoning inspects the quarries and their report indicates that they have not in the past year found any violations of either the Ordinance or the conditions of the permit. The Department of Environmental Management inspects the quarries and they found no problems in erosion and siltation, and the Air Pollution Control and the Health Department have provided a report which shows there has been a vast improvement in the last year. Mr. Knowlton stated that is probably due to the new equipment and more modern techniques in handling dust situations. Mr. Knowlton stated that he had nothing to report to the Board other than that the quarry is operating properly. He stated that there were people present from the Health Department and the Zoning Office if there were any questions.

Mr. Lee Pfifer, the Vulcan Quarries representative, spoke to the Board. He stated that he was here because of the condition in the permit that calls for an annual review. He stated that that condition also called for an extension of the special use permit next year. Mr. Pfifer stated that an as-built had been prepared showing the various structures that had been constructed. He had submitted it to the staff for review, and asked that the Board accept this new plat. Mr. Pfifer reported to the Board that the restoration of the old quarry site now owned by the Fairfax County Water Authority is 80% complete, and it will be finished in the spring.

Mr. Hyland asked Mr. Pfifer about Saturday drilling in the quarry and if he would anticipate asking the Board to extend the hours of this operation when he comes back for an extension of the special permit. Mr. Pfifer stated that he did intend to ask for an extension of hours. He stated that the staff had not received any complaints so far about this operation.

Chairman Smith stated that the report indicated that there has not been an effective device to measure the noise level for several months. He asked why it had not been repaired. Mr. Knowlton replied that it had been repaired, and it was the earth vibration not noise machine.

Mr. Pfifer stated that Vulcan Quarries merely reimburses the County for the machines, but the County controls the machines and has them repaired.

Mr. Hyland made a motion to accept the report on Vulcan Quarries as presented and commend both staff and Vulcan for staffs' monitoring of the activity and Vulcan for obviously doing what has been expected of them under the permit.

Mrs. Day seconded the motion.

//

The Board continued their discussion of variance applications that do not meet the Code under the Ordinance since Mr. DiGiulian had arrived. Chairman Smith brought Mr. DiGiulian up-to-date on a discussion that took place with staff and the County Attorneys' Office the previous Friday. He stated that there was a discussion about the Board taking summary actions on items that did not meet the Ordinance. He stated that the summary items should be placed in a special place on the agenda. The Chairman stated that the conclusion was that they should be placed at the end of the agenda, but indicated that he had a problem about making decisions on the applications without hearing them.

262

Mr. DiGiulian stated that he felt if the Zoning Administrator accepts an application, then he was opposed to any action taken on any application without hearing the applicant. He stated that supposedly if they were hearing applications that don't meet the Ordinance, then the applications should not have been accepted.

Chairman Smith stated that there were a lot of merits for summarily dismissing a case, but he couldn't bring himself to do it in an arbitrary fashion without hearing the applicant.

Mr. Yaremchuk stated that the Board should listen to every applicant, and if they had a good case then the Board could decide if they wanted to hear the opposition. If not, then the application could probably summarily be denied. To do it arbitrarily without a public hearing would not be democratic.

Mrs. Day stated that if the Board was going to have to deny it, it seems a waste for the Zoning Administrators' Office to take the money, go through the advertising and have the applicant come before the BZA. She stated that it was a waste of County and peoples money. She stated that the Board had explicit instructions that we're not authorized to grant variances on certain applications.

Mr. Hyland stated that he felt inclined to insure that everyone has his or her day in court on any given issue. He stated that he felt the Zoning Administrator feels there is no flexibility and that he could not turn away a variance whether or not he feels it lacks merit. That is the context in which the subject was brought up . Mr. Hyland stated that if there is no flexibility in the Ordinance, if it's just not permitted for someone to come in an request a variance of an outright prohibition to this Board, is a disservice to the applicant, the County and this Board. It basically forces us to go through the motions and reaching the inevitable on the principle that one is entitled to a hearing. Mr. Hyland stated that the second subject that was brought up was the problem the Board has with the number of applicants requesting to enclose carports. The Boards actions in response to those requested variances and the position of the County Attorney varies. The whole thrust of the discussion last Friday was to empower staff to review applications for variances that come in to the Board and if the substantiation suggested by the applicant just doesn't seem to cut the mustard, then staff would be able to put it on a summary docket for us to take a look at and determine that there is no way this variance could be requested. That would give us a chance to say the application is deficient. Mr. Hyland stated that the alternative he would like to suggest is that if the Board had a summary docket where they could look at the cases, and if they decided to turn the application down and not go forward with a public hearing, they could say to the applicant that it has been looked at and does not appear to have merit. That way if the applicant still wanted a public hearing, they would be entitled to one. That would tell the applicant that we did not feel we had the authority to grant the variance. He stated that he didn't think the Board should go through the motions of a public hearing when there is no chance for relief.

The Chairman stated that he was concerned about staff time and Board time if they set up a summary docket. He stated that the regular way of hearing applications was a faster way to hear them.

Mr. Yaremchuk made a motion to table the discussion for a later date. Mr. DiGiulian seconded the motion.

//

The Chairman called the scheduled 10:30 A.M. case - PRESENTATION ON GROUP HOMES PROCESS.

Mr. Yates introduced Mr. Larry McDermott whose assigned duties included overseeing all the issues relating to Group Residential Facilities. He stated that Larry would be making the presentation, and that Mr. John Callahan with the Office of Human Services was also available.

Mr. McDermott defined the Group Residential Facility in terms of the Zoning Ordinance. He stated that it is a dwelling unit which is used to provide assisted community living for persons with physical, mental, emotional, familiar and social difficulties, and in which a maximum of eight such persons receiving community assisted living reside. Based on the fact that the last four decisions to approve a Group Residential Facility were appealed to this body, we believe that it may be helpful to review this in consideration of any future appeals. He stated that prior to November 27, 1978 such uses were allowed by right in residential districts. As a result of discussion and Board of Supervisor action, the Zoning Ordinance was amended. This amendment established a Group Residential Facility Commission, it established a process for reviewing and approving such applications and it vested the Zoning Administrator with the authority to make such decisions. He stated that the Zoning Administrator can only consider the health and safety of the residents and the compatibility of geographical dispersion in making his decision. Since the Ordinance was amended there have been

263

twelve such applications and eleven have been approved. Mr. McDermott stated that once an application is received a team inspection is conducted by Health, Fire and Building to see if the structure is sound and staff conducts a preliminary meeting to get details on the program. The Zoning Ordinance requires that at least ten adjacent property owners are notified of the application and a public meeting is held. After the meeting and receiving input from the citizens, the Group Residential Facility Commission makes a recommendation to the Zoning Administrator as to whether to approve or deny. Finally the Zoning Administrator makes the decision. Mr. McDermott stated that the initial permit is only issued for a maximum of two years, and a six month and one year review is conducted. Sixty days prior to the expiration date a new application must be submitted. He stated that they have a pretty comprehensive oversight once the permit is issued. Mr. McDermott stated that that was how the process works and he would be glad to answer any questions.

// Mr. Yaremchuk left the meeting.

Page 263, December 8, 1981, Scheduled case of

11:00 A.M. MICHAEL FANSHEL, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that the appellant's use of a single family dwelling for three (3) separate dwelling units is a violation of Sect. 2-501 of the Zoning Ordinance, located 3209 Collard St., 92-2((19))40, Lee Dist., R-2, 16,200 sq. ft., A-81-L-012.

The Chairman stated that he had been informed that the notices for this case were misplaced in the secretarys' office and the staff was requesting that the Board defer the case to February 2, 1983 at 10:00 A.M.

//The Board recessed for ten minutes.

Page 263, December 8, 1981, Scheduled case of

11:30 A.M. JAMES & PEGGY MCCLANAHAN, appl. under Sect. 18-401 of the Ord. to allow construction of second story addition to dwelling on a corner lot 21.0 ft. from one street line and 46.6 ft. from the other and 16.0 ft. from a side lot line (50 ft. min. front yard and 20 ft. min. side yard req. by Sect. 3-E07), located 11504 Potomac Rd., 119-4((2))(21)19, 20 & 21, Mt. Vernon Dist., R-E, 7,130 sq. ft., V-81-V-210.

Mrs. Peggy McClanahan of 11504 Potomac Road, Lorton, Virginia, presented the application. She stated that they could not afford to buy another house and they wanted to add a second story. The proposed addition would cover the same dimension as the original house not including the porch and the bathroom at the back. She stated that the bathroom addition was on the back of the house when they bought it in 1968. Mrs. McClanahan stated that the foundation would support the second story. The general conditions of the area were that many of the houses have two stories. Most of the houses were summer cottages and most people winterized them and made them year round homes.

Mr. Hyland stated that this was a classic case in which the existing structure does not meet the existing code, and he could think of no better set of circumstances for varying the impact of the Ordinance other than this case. It is clear that they could not build anywhere else. He stated that this was a good case brought before them and they should get relief.

Mr. Randy Struford of 5801 Nicotine Trail, Lorton spoke in support of the request. He stated that he lived directly across the street from the applicants and that the nature of the area is such that there are tall trees surrounding the houses. He stated that they were the only neighbors affected by the addition and they had no objection at all.

Mr. William Braylevel of 11416 Gunston Road, Lorton spoke in support of the request. He stated that he had been living in that area for twenty years and that a lot of the houses in the area have been remodeled closer to the boundry line than what the McClanahans were asking for. He stated that one person had even built in the right-of-way. There are about five houses that have added second stories in the last few years.

Mr. Walter Drives of 4704 Coastal Drive, Woodbridge spoke in support. He stated that he was the prospective contractor and he had inspected the foundation and the footings of the house. He stated that they had been rebuilt and it was more than adequate to support an additional story.

There was no one to speak in opposition to the request.

264

RESOLUTION

In Application No. V-81-V-210 by JAMES & PEGGY MCCLANAHAN under Section 18-401 of the Zoning Ordinance to allow construction of second story addition to dwelling on a corner lot 21.0 ft. from one street line and 46.6 ft. from the other and 16.0 ft. from a side lot line (50 ft. min. front yard and 20 ft. min. side yard req. by Sect. 3-E07), on property located at 11504 Potomac Road, tax map reference 119-4((2))(21)19, 20 & 21, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 7,130 sq. ft.
4. That the applicants' lots and dwelling are substandard in location, width and area and the existing porch and bathroom addition are closer to the lot lines than the proposed addition, therefore, construction of a second story would not place the proposed addition any closer to the lot lines than the existing structure. The proposal would have been permitted prior to 1978 before the change in the Zoning Ordinance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1. (Mr. Smith) (Mr. Yaremchuk being absent)

Page 264, December 8, 1981, Scheduled case of

11:40 A.M. HANS B. & THEODORA A. FRANKE, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport 10.19 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 8948 Miller Ln., 28-4((21))11, Centreville Dist., R-3, 11,784 sq. ft., V-81-C-212.

Mrs. Theodora Franke of 8948 Miller Lane presented her application. She stated that they would like to enclose the garage to store bikes, garden equipment and two cars. She stated that she and her husband had owned the property for two years and they would like the property to look neater.

In response to a question from Mr. Hyland, Mrs. Franke stated that 80% of the houses in the neighborhood have garages and that the request was minor, being 1.18 ft. She stated that the backyard was pie-shaped and the rear neighbors porch looked right into her carport.

Mr. Eakin of 8956 Miller Lane spoke in support of the request. He stated that it would be an improvement to the neighborhood to see an enclosed garage rather than an open carport.

There was no one else to speak in support and no one spoke in opposition.

265

RESOLUTION

In Application No. V-81-C-212 by HANS B. & THEODORA A. FRANKE under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 10.19 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 8948 Miller Lane, tax map reference 28-4((21))11, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 11,784 sq. ft.
4. That the applicants' property is exceptionally irregular in shape and has a very narrow, small back yard. It has an unusual condition in the location of the existing building which is set back and it has two front yards. The variance is so small being 1.81 ft.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Yaremchuk being absent)

Page 265, December 8, 1981, Scheduled case of

11:50 A.M. R.J.L. ASSOCIATES, INC., appl. under Sect. 18-406 of the Ord. to allow house to remain 19.8 ft. from front lot line (25 ft. min. front yard req. by Sect. 3-207), located 15201 Louis Mill Dr., 33-4((2))171A, Springfield Dist., R-2(C), 12,034 sq. ft., V-81-S-211.

Mr. Chip Paciulli of 307 Maple Avenue, Vienna, presented the application. Mr. Paciulli stated that building permit #81154B0300 had been granted for this house at this location. He stated that the applicant had secured the building application and that the construction had started and the foundation was in. He stated that the house was originally sited in error by our firm by making a drafting error on the grading plan. The builder took that grading plan and got a building permit. A second error was made after the County issued the permit. When a house location survey was made it was apparent that the house was in violation. Mr. Paciulli submitted a petition signed by several contiguous neighbors stating they had no problem with the variance.

In response to a question from Mr. DiGiulian, Mr. Paciulli stated that his firm staked the house for construction and the error was not caught at that time.

There was no one to speak in support and no one to speak in opposition to the request.

// It was the consensus of the Board members to recess for lunch for 45 minutes to give staff members time to locate the Building Permit and submit it for the record.

The building permit was submitted for the record and there were no further questions from the Board Members pertaining to the variance application.

RESOLUTION

In Application No. V-81-S-211 by R.J.L. ASSOCIATES, INC. under Section 18-401 of the Zoning Ordinance to allow house to remain 19.8 ft. from front lot line (25 ft. min. front yard req. by Sect. 3-207), on property located at 15201 Louis Mill Drive, tax map reference 33-4((2))171A, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 12,034 sq. ft.
4. That non-compliance was the result of an error in the location of the building subsequent to the issuance of a building permit.
5. That non-compliance was no fault of the applicant.

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

1. That the granting of this variance 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 variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. Yaremchuk being absent)

Page 266, December 8, 1981, Scheduled case of

12:00 NOON LAWRENCE W. & DIANA R. LAVELY, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling 3.0 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 7847 Midday Ln., 102-1((13))29, Mt. Vernon Dist., R-3, 15,612 sq. ft., V-81-V-213.

Mr. Lawrence Lavely of 7847 Midday Lane, Alexandria, presented his application. He stated that he wanted to extend an existing half garage into a full two car garage. By doing this he would exceed the set back requirements. He stated that the existing structure is currently 15 ft. from the adjoining property line. He stated that he had owned the property for five years.

In response to a question from Mr. Hyland, Mr. Lavely stated that presently they could not fit even one vehicle into the carport because the previous owners had put a laundry room in the back section.

There was no one to speak in support and no one to speak in opposition to the application.

267

RESOLUTION

In Application No. V-81-V-213 by LAWRENCE W. & DIANA R. LAVELY under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling 3.0 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 7847 Midday Lane, tax map reference 102-1((13))29, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1981; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 15,612 sq. ft.
4. That the applicants' property has an unusual shaped lot with converging lot lines.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Yaremchuk being absent)

Page 267, December 8, 1981, Scheduled case of

12:15 P.M. SIDEBURN RUN RECREATION ASSOCIATION, INC., appl. under Sect. 3-103 of the Ord. to amend S-77-79 for community swimming pool, to permit increase in number of memberships from 400 to 450, located 10601 Zion Rd., 68-3((1))16, Annandale Dist., R-1, 3.0 acres, S-81-A-080.

Ms. Sylvia Jones, from the Administrative offices of the Board of Directors presented the application. She presented a letter to the Board Members that she had prepared and read it into the record. She stated that the boundaries of the Sidburn Run Recreation Association cover a large area including the entire communities of Middle Ridge, Oak Walk, Country Club View and Bonnie Brae. This is the only pool operated in that area. Many of those homes had not been built when the pool was constructed many years ago, and the 400 family membership limit selected at that time was fair and reasonable. The waiting period to join the pool was approximately two months. Ms. Jones stated that local recreation has become increasingly popular with the high cost of gasoline, and the waiting list has increased to 150 families. During 1981 only 12 families turned in their membership, which makes the waiting list stationary. She stated that she hoped this modest increase would provide memberships for additional families and the club would have a better opportunity to serve the community.

Mr. Hyland inquired as to how many active members were using the pool. Ms. Jones stated that they currently had 400 families, but many of the members were no longer using the pool and were retaining the memberships to help with the resale of their homes. She stated that there were 40 - 50% who were not using the pool on a regular basis. She stated that the previous year they had taken a survey of the pool on the hottest days, and the head count was generally 27 - 35 people. Ms. Jones stated that she felt the pool was greatly under-utilized and the community was not being served.

Ms. Nancy Arn, the Vice-President of the Sideburn Run Recreation Association, Inc. stated that they were bound by by-laws. She stated that at a later date, they would probably come before the Board to ask for 50 more memberships, but they came through rather conservatively this time.

There was no one to speak in support and no one to speak in opposition to the request.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-A-080 by SIDEBURN RUN RECREATION ASSOCIATION under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-77-79 for community swimming pool, to permit increase in number of memberships from 400 to 450, located at 10601 Zion Road, tax map reference 68-3((1))16, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.0 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of memberships shall be increased from 400 to 450.
8. The same requirements shall be in effect from the former application (S-77-79)

Mr. Hyland seconded the motion

The motion passed by a vote of 4 - 0. (Mr. Yaremchuk being absent)

269

12:30 P.M. LUCK QUARRIES, INC., appl. under Sect. 7-305 & 8-101 of the Ord. to amend S-113-76 for stone quarrying, crushing, processing, sales and accessory uses to permit continued operation for a new term, addition of 28 acres to the site, change in hours of operation to allow a portion of the crushing plant to operate until midnight, 5 nights per week and change limitation on blasting such that the max. of 5 blastings per week can be accomplished on a schedule which would allow two blastings on any one permitted day, located 15600 Lee Highway, 64-1((4))7A and 64-1((1))13, 14, 15, 16, 17 & 4, Springfield Dist., R-1 & I-6, 200.2692 acres, S-81-S-064.

Mr. Royce A. Spence an attorney at 609 Park Avenue, Falls Church, presented the application for the applicant. Chairman Smith asked if Mr. Spence had a copy of the Board action from yesterday. Mr. Spence indicated that the action was to grant unanimously the 28 plus acres to the Natural Resources District and the proffers were made a part of the BZA staff report.

Chairman Smith stated that the proffers are as follows: 1. The depth will not exceed the limits of excavation that the staff has reflected on the Development Plan 2. That the berm shown on the Development Plan will be not less than 20 feet in height 3. There will be no excavation access to and from the subject property other then by the tunnel under Rts. 29-211 4. The buffers reflected on the Development Plan will be left as much as possible in a natural state except around the pond and berm area.

Mr. Spence stated that initially when they worked the north side the road was reinforced until the tunnel could be drilled. He stated that in time, they would probably recommend to the Board that number 4 be changed. A berm will be added with trees planted to protect the adjoining property owner from noise.

Chairman Smith asked Mr. Spence to address the request for the crushing plant to remain in operation until midnight. Mr. Spence stated that they would also like the permit to be altered slightly to allow more blastings and to be allowed to shoot it two times per day, not to exceed five times per week. The reasons are efficiency and it gives us more flexibility in order to await more favorable atmospheric conditions. Mr. Spence stated that traffic is stopped during blasting for approximately 3 - 5 minutes and this is accomplished by flagmen with radios.

Mr. Spence stated that one of the other changes he would like to address was to allow a change in hours of operation to allow a portion of the crushing plant to operate until midnight. He stated that a small portion, approximately 13%, was the area being considered. On a previous application in 1976, the Board granted us a 30 day trial basis, to see if we could run this part of the operation without disturbance to the neighbors. Not only did we run the 30 days without disturbing them, but also from July until December without any complaints. Mr. Spence stated that he again came back in 1977 and asked the Board for the same request. The operation was run through the full summer without complaint from the neighbors. Mr. Spence stated that what he was asking for was the right to try this operation again for a period of six months under the supervision of the Zoning Office and the Board of Zoning Appeals. He stated that during the evening hours no trucks would be operating in that area and that the stone would be conveyed from the plant to the storage area by conveyor belts.

In response to a question from Mrs. Day, Mr. Spence stated that no blasting would be done before 10:00 A.M. and after 4:00 P.M.

Chairman Smith asked what the necessity was for operating the crushing plant at night. Mr. Spence replied that there were several reasons. One was that they felt they could do it cheaper by the electricity that was furnished to them at night at the nighttime rates. Second, the Prince William Cooperative has come to us and indicated that it would be helpful to them so they would not have to put additional power generating units in that area. They would have to supply less equipment if we used what was available during the evening. Mr. Spence stated that this change will not increase the capacity of the plant, but that it will remain basically the same. He stated that he was trying to attempt to increase the efficiency of the plant and the cost of producing the material.

There was no one to speak in support of the application.

Mr. Jeff Entwistle, of 16000 Lee Highway, spoke in opposition. He stated that his concern was the proposed digging in the area of his house and that the property he owned had been in his family for 60 years. Mr. Entwistle indicated that he felt his privacy and safety had been violated. He stated that with the blastings going on so close to his house, he would like additional berms and screening.

Chairman Smith stated that a six foot chain link anchor fence would also be required in that area for safety purposes.

Mr. Entwistle stated that he was concerned with the vibrations that come from the blastings. He said he could be inside his house and it would shake from the vibrations. He was also annoyed by the noise it caused. He stated that dishes had been knocked off shelves during blastings. Mr. Entwistle indicated that there may have been damage caused to his house during blastings since there were several large cracks in the walls and the foundation of the house. He was not certain what caused these cracks as the house was over 200 years old.

The next person to speak was Mr. Rollin Swain, the Superintendent of Manassas Battlefield Park. He indicated that he felt he did not fall into either the support or the opposition category, but that he was concerned. He stated that as a manager of a historical site, he was concerned about the operation of the magnitude of Luck Quarry. He stated that it appeared that the quarry was well managed and did not pose any threat to the quality of the battlefield. Mr. Swain said he felt the conditions of the current permit are sufficient to control the operation effectively. One of his concerns was that should management or ownership change, the County should continue to be vigilant so that the operation would remain at the level it has been in recent years.

During rebuttal, Mr. Spence stated that the Bureau of Mines had done a study of blasting operations around the country. It showed what amount of earth vibration was necessary before you could begin to predict structural damage. Their figures show that it was 4 inches per second measured by a graph. At this time the County decided the limit should be considerabley less than that as far as the Ordinance goes. Mr. Spence stated that he believed the County has set the limit to 1 1/2 inches per second. He stated that the way Luck Quarries did their blastings, they got a rumbling effect rather than a big blast. That helped to keep down the vibration. He stated that the County regularly comes out to check the amount of vibration produced.

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-S-064 by LUCK QUARRIES, INC., under Section 7-305 & 8-101 of the Fairfax County Zoning Ordinance to amend S-113-76 for stone quarrying, crushing, processing, sales and accessory uses to permit continued operation for a new term, addition of 28 acres to the site, change in hours of operation to allow a portion of the crushing plant to operate until midnight, 5 nights per week and change limitation on blasting such that the max. of 5 blastings per week can be accomplished on a schedule which would allow 2 blastings on any one permitted day, located at 15600 Lee Highway, tax map reference 64-1((4))7A and 64-1((1))13, 14, 15, 17 & 4, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-1 & I-6.
3. The area of the lot is 200.2692 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R & I Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

271

RESOLUTION

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. Blasting shall be limited to a max. of 5 blastings per week with a max. of 2 blastings per day, between the hours of 10:00 A.M. to 4:00 P.M. Monday thru Friday only.
8. The Zoning Administration is empowered to extend on a yearly basis that portion of the crushing operation indicated by the applicant to be allowed to operate until midnight for an experimental period of six months.
9. This permit is granted for a period of 5 years.
10. All other requirements of S-113-76 not amended by this action shall remain in effect.
11. The applicant will not exceed the limits of excavation as established and reflected on the development plan submitted with the application.
12. The berms shown on the development plan will be not less than twenty feet in height in the area shown on the plans.
13. There will be no excavation access to and from the subject property other than by the Tunnel under Routes 29-211.
14. The buffers reflected on the development plan will be left as far as possible in their natural state except around the pond and berm area.
15. The applicant will comply with the Zoning Ordinance and Standards established for Group I uses and particularly with the Group I Noise Standards.
16. The applicant will construct the berm and provide plantings as indicated on the map adjacent to the Entwistle property.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1. (Mr. Smith) (Mr. Yaremchuk being absent)

Page 271, December 8, 1981, Scheduled case of

12:45 P.M. TYSON'S I & II, appl. under Sect. 4-403 of the Ord. to amend S-161-78 for commercial recreation facility to permit addition of outdoor swimming pool and food service bldg. to existing facilities, located 8260 Greensboro Dr., 29-3((15))11A, Dranesville Dist., C-4, 161,873 sq. ft., S-81-D-075.

Mr. Jerry Emrich from the law firm of Lawson, Walsh, Colucci & Malinchak, 1400 N. Uhle Street, Arlington, represented the applicant. He stated that he was seeking a special permit for an outdoor swimming pool on the same side on which is presently recreational facilities. There is already a six foot berm and a fence would be built behind the berm and beside the pool. The top of the fence would be about 11 feet 4 inches. He stated that essentially the outdoor pool would resemble an indoor pool without a top, because it is fully enclosed on all four sides. Two sides will be brick and the other two sides would be fenced. This will not bring any new members to the recreational facility. Mr. Emrich stated that presently, this is a seasonal operation with most of the members using the facilities in the fall and winter months. The applicant is trying to get the members to use the services on a year round basis.

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-D-075 by TYSON'S I & II under Section 4-403 of the Fairfax County Zoning Ordinance to amend S-161-78 for commercial recreation facility to permit addition of outdoor swimming pool and food services bldg. to existing facilities, located at 8260 Greensboro Drive, tax map reference 29-3((15))11A, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

272

R E S O L U T I O N

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1981; and

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

1. That the owner of the property is the applicant.
2. The present zoning is C-4.
3. The area of the lot is 161,873 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in C Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The provisions of special permit S-161-78 shall continue to remain in effect.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. Yaremchuk being absent)

Page 272, December 8, 1981, Scheduled case of

1:00 P.M. FIRST ASSEMBLY OF GOD, appl. under Sect. 3-303 of the Ord. for construction and operation of a church and related facilities, located 5225 Backlick Road, 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-078. (DEFERRED FROM 11/17/81 FOR NOTICES)

Chairman Smith informed the Board that the notices were not in order. It was the consensus of the Board to defer the case to January 5, 1982 at 12:10 P.M.

Page 272, December 8, 1981, Scheduled case of

1:10 P.M. ANNANDALE -SPRINGFIELD CHRISTIAN ACADEMY, appl. under Sect. 3-303 of the Ord. for a private school of general education, and child care center, located 5225 Backlick Road, 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-079. (DEFERRED FROM 11/17/81 FOR NOTICES)

Chairman Smith informed the Board that the notices were not in order. It was the consensus of the Board to defer the case to January 5, 1982 at 12:20 P.M.

273

Page 273, December 8, 1981, AFTER AGENDA ITEMS

MEADOWBROOK ASSOCIATES: The Board was in receipt of a request from Mr. Rosenberger of Bettius, Rosenberger and Carter for a six month extension for a special permit granted to Meadowbrook Associates. It was the consensus of the Board to grant a six month extension. The Board indicated that this was the second extension that they had granted to Meadowbrook Associates.

//

Page 273, December 8, 1981, After Agenda Items

CHILDREN'S WORLD: The Planning Commission voted to pull S-81-P-073, Children's World, for public hearing before the Commission on January 20, 1982. The Commission requested that the Board of Zoning Appeals defer decision on this scheduled application pending receipt of a Planning Commission recommendation. It was the consensus of the Board to consider the deferral request at the hearing on January 5, 1982.

//

Page 273, December 8, 1981, After Agenda Items

ALBERT L. & CHARLOTT C. RAITHEL, JR.: The Board was in receipt of a letter from Mr. & Mrs. Raithel requesting reconsideration of a variance which was denied on October 6, 1981. Due to the fact that only four Board members were present, it was the consensus of the Board to consider this request at a later date.

// There being no further business, the Board adjourned at 3:00 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

DANIEL SMITH, CHAIRMAN

Submitted to the Board on July 7, 1983

APPROVED: July 12, 1983
Date

274

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Night, December 15, 1981. The following Board Members were present: Daniel Smith, Chairman; Gerald Hyland and Ann Day. (Messrs. John DiGiulian and John Yaremchuk were absent due to the snow).

The Chairman opened the meeting at 8:15 P.M. and Mrs. Day led the prayer.

8:00 P.M. MARVIN D. & JEAN TOOMBS/SEATCO OF ARLINGTON, INC., appl. under Sect. 18-401 of the Ord. to allow automobile oriented use (automotive upholstery) with portions of driveways and parking spaces having gravel surface (dustless surface req. by Sect. 11-102), located 5714 Center Ln., 61-2((20))17A, Mason Dist., C-8, 19,039 sq. ft., V-81-M-199.

The variance was deferred until Tuesday, February 2, 1982 at 10:30 A.M. for notices.

//

Page 274, December 15, 1981, Scheduled case of

8:15 P.M. ST. MARK'S CHURCH, appl. under Sect. 3-103 of the Ord. to amend S-286-75 for church and related facilities to permit addition of new church building, new access, and additional parking to existing facilities, located 9970 Vale Rd., 37-4((1))42, Centreville Dist., R-1, 19.621 acres, S-81-C-081.

Reverend Father Thomas J. Cassidy of 9970 Vale Road in Fairfax represented the church. He stated that they were asking permission to expand their facility to do more of the service that they had been doing for the past 16 years. He stated that this was a Catholic parish and they held religious service and had a religious education program in the afternoon and in the evening. Due to the growth of the population during the past several years, the church had found it was too small to accommodate its needs. Father Cassidy stated that he did not want to get into the technical details of the addition as John Harris, his engineer, was present to explain that matter to the Board. Father Cassidy stated that they were adding space to accommodate more people. In response to questions from the Board, Father Cassidy stated that they would increase the parking facilities and provide a new access also. Mrs. Day stated that Cortica Street was a very small street.

Mr. John Harris of Patton, Harris & Associates informed the BZA that this special permit application was to allow construction of a new church on the property located at 9970 Vale Road which was zoned R-1. The sanctuary would seat 1,000 people. The parking would be increase by 210 spaces bringng the total to 310 spaces. Approximately 253 parking spaces were required. Mr. Harris stated that the parking would be adequate. The existing entrance to the church was located on Vale Road which was adequate for the expansion and met the VDH&T standards. However, in order to have better circular access, the church had proposed a new strip for a second entrance. Mr. Harris stated they had a letter of intent from the two property owners for the strip. Mr. Harris asked that approval of the special permit not be contingent upon the two entrances since a firm committment had not been arranged yet.

Chairman Smith inquired as to why it was necessary to open up Cortica Street. Mr. Harris stated that there was a problem as far as turning on the site. What the church proposed was to provide the second entrance and Cortica Street could be used as an exit towards Vienna and Vale Road could be an exit towards Oakton. Mr. Harris stated that this would help the circulation of traffic. Mr. Harris stated that he had discussed it with VDH&T and the road had been widened to 22 ft. Mr. Harris stated that the two sections would be a corner lot and would not meander through any subdivision. Chairman Smith inquired if it was possible to get the 50 ft. right-of-way without any variance. Mr. Harris stated that there was not any problem. The 50 ft. would be off the back of the two lots. There were existing houses on the property. Chairman Smith inquired as to the distance the two houses set back from the access entrance. Father Cassidy stated that the two houses were in the front section close to Vale Road. Chairman Smith was concerned about the houses backing up to the road. Mr. Covington stated that the church did not own the property and did not even have a contract as yet. Mr. Harris explained that the church only had a letter of intent to sell the property. Mr. Harris stated that he was showing the road on the plat at this time in order to avoid coming back at a later date. Chairman Smith stated that the church did not have the right and the BZA did not have the right to grant a special permit until the land was acquired. Chairman Smith stated that he had no problem if the Board wanted to give the church tentative approval provided that the church came back after the sale was finalized. Chairman Smith stated that he had not heard the justification for the additional access to a degree that he could support it.

Mrs. Day stated that she lived over in Lakeview Estates and did not attend that particular church. She inquired if it was possible to widen the driveway and have it for two way traffic instead of traffic going through Cortica Street. She stated that it was a very small street. Father Cassidy stated that one aspect of that prospect would be an advantage. However, the church was talking about creating a traffic pattern to accommodate the people coming from Oakton and Vienna. The church did not want the traffic crossing over. The

rest of Vale Road was not widened. He stated that it would be a little iffy to cross traffic. If there was a new entrance and people were able to make the left turn, it would change the traffic pattern. Father Cassidy stated that it would provide a better flow.

Chairman Smith inquired if the church would be willing to drop its request for the access until it acquired the land. Mr. Harris stated that the church would if it could get an intent from the Board. Chairman Smith explained that there were only three Board members present and that he could not support the request. He understood the church's problem as far as circulation but he still felt that the church could widen the entrance on Vale Road to alleviate most of the problems. Father Cassidy stated that the church would not want to hold up the approval for the access road because they still had a lot of work to do on other approvals and did not want the access to hold up everything at this point. Mr. Hyland concurred with what the Chairman had stated as far as the Board not having the legal right even though the church had a letter of intent. Mr. Hyland stated that the Board had never granted a permit before on this type of basis. Mr. Hyland stated that he would support the access road since the church had good reason to do it. Mr. Hyland stated that he did not know what the daily traffic count was on that road and whether the access would have an adverse impact in that regard. He stated that if the church had any information on that matter, it would be helpful. Mr. Hyland stated that he thought what the church was proposing made a lot of sense.

Father Cassidy stated that the traffic impact on Cortica Street would not be that great since the area to be acquired was on the corner. He stated that people driving from other areas would be coming by that particular area anyway. People living there at the present time had to drive around to Vale Road to get to the church. Father Cassidy stated that the access would be an advantage.

Chairman Smith inquired as to what impact this would have on Vale Road. Father Cassidy stated that the traffic would be at a different place on Vale Road but the traffic was already there. Chairman Smith stated that it would create a very heavy traffic flow which was a hazardous situation. Mrs. Day stated that the acess was only one block away. Mr. Harris explained that the accesses would not be converging on one another. People leaving that entrance would all be going in the other direction so that the traffic would not converge together. Chairman Smith stated that originally that was the way things would work. Mrs. Day stated that it was a bottleneck as far as the traffic but people had to go to church.

Mr. Hyland inquired as to when the matter of time on the second entrance would be resolved. Father Cassidy stated that the church did not have anything other than a letter of intent at this time. He stated that it was not his decision to move forward on the matter. Chairman Smith stated that the dwellings had to be shown and the setbacks indicated before the Board could review the case. Father Cassidy stated that it had been his understanding that the matter had been looked into by VDH&T and there were not any problems. Chairman Smith stated that the church could request an amendment at such time as they acquired the land but it would require another hearing. Mr. Harris stated that they could get information about the adequacy of the road. Mr. Hyland stated that the church might want to check the setbacks. He stated that he was prepared to support the request for the moment.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-C-081 by ST. MARK'S CHURCH under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-286-75 for church and related facilities to permit addition of new church building, new access, and additional parking to existing facilities, located at 9970 Vale Road, tax map reference 37-4((1))42, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on December 15, 1981; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 19.621 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

RESOLUTION

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. That the seating capacity shall be 1,010 persons.
8. The number of parking spaces shall be 300.
9. The granting of this special permit is subject to the provisions of S-286-75 not altered by this resolution.
*10. This approval is given subject to the representations made by the applicant that the request for the second entrance on Corsica Street shall be withdrawn for the moment and that the church has the right to reapply for this entrance at a future date.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 (Messrs. DiGiulian & Yaremchuk being absent).

Page 276, December 15, 1981, Scheduled case of

8:30 P.M. THE CHRISTOPHER COMPANIES - FREDERICK KOBER, PRESIDENT, appl. under Sect. 3-803 of the Ord. for community tennis courts, located 7601 Pohick Rd., R-8, Lee Dist., 108-1((1))42, 33.1 acres, S-81-L-082.

As the required notices were not in order, the Board deferred the special permit until Tuesday, January 12, 1982 at 11:30 A.M.

//

Page 276, December 15, 1981, Notice Procedures

As there were a lot of applications having to be deferred because of a deficiency in the notice requirements, the Board discussed the possibility of having the zoning staff do the actual notification. No decision was made other than to provide as much assistance as necessary to insure that the notices were properly handled.

//

Page 276, December 15, 1981, Scheduled case of

8:45 P.M. RICHARD PUAL GUERRIERI, appl. under Sect. 3-303 of the Ord. for a home professional office (nutritionist), located 3300 Nevious St., R-3, Mason Dist., 61-2((7))12, 17,356 sq. ft., S-81-M-083.

Chairman Smith advised Mr. Richard Paul Guerrieri that there were only three Board members present and that it would take a unanimous vote to effect a favorable decision. Mr. Guerrieri asked to be able to present his case. He stated that his business would be handled by an appointment basis only. It would be a one to one approach and there would not be any change to the structure of the house. The only equipment used in this operation was a computer for nutritional evaluations to assist him in the various details that he handled. Mr. Guerrieri stated that he would not be retailing any products. Mr. Guerrieri stated that he felt his business would be a major contribution to the community. Mr. Guerrieri stated that good health was nutrionally related. He desired to make his contributions along these lines.

In response to questions from the Board, Mr. Guerrieri stated that he intended to have patients come to his home. Chairman Smith inquired as to the number of patients per day. Mr. Guerrieri stated that he was starting his business from scratch. He did not have any idea how long it would take for him to build up his clientele. Mr. Guerrieri stated that he was leaving a different business in order to go into this line of business. Mr. Guerrieri estimated that he would be bringing in up to five patients per day within a six month period. Mr. Guerrieri stated that he would not have overlapping of clients. He stated that he did not have any assistants and would not be able to do physicals. Mr. Guerrieri stated that he would only be doing verbal consultations and work with the computer which would take about an hour. Mr. Guerrieri stated that he would space his appointments about every 1½ hours in order to do the paperwork involved.

277

Mr. Guerrieri stated that Mr. Yaremchuk was a neighbor of his and he had called him. He stated that Mr. Yaremchuk had interegated him for about 15 minutes. Mr. Guerrieri stated that he had talked to his neighbors and had not found anyone opposed to his operation. Mr. Guerrieri stated that he had given this business a lot of thought and preferred to establish it in a commercial area but because of his financial position, he would not be able to support the rent in a commercial area. Mr. Guerrieri stated that he would be dependent upon his wife's income until he became established. Mr. Guerrieri stated that it would be a sacrifice until he got the business going. He stated that once he got the business going and the people coming in, the first thing he would do would be to look for a commercial space. However, he did not believe his business would have any impact on the neighborhood.

Chairman Smith inquired as to where Mr. Guerrieri practiced his business at the present time. Mr. Guerrieri replied that he had only just received his master's degree and had only been counseling people on a friendly basis. He stated that his field was nutrition. Mr. Guerrieri stated that he had to consider not only what people ate but their individual body system as well. Mr. Guerrieri stated that it was possible to prevent disease through what people ate.

Mrs. Day inquired as to the number of people in Mr. Guerrieri's family and was informed there were 2½. She inquired as to the number of cars and was told they owned two cars. Mrs. Day stated that Mr. Guerrieri had a very narrow driveway without any turnaround area. She stated that it was not a good facility to have people coming into. Mrs. Day noted that there was a service drive with an island at the side. Mr. Guerrieri stated that his wife was gone from 7 A.M. until 7 P.M. Mr. Guerrieri stated that he would not create a problem with parking. Mrs. Day inquired as to where the patients would enter the house and whether there was a waiting room. Mr. Guerrieri stated that he had a back entrance and a walkway to the door. He stated that he had a room in which he planned to set up his office. Mrs. Day inquired if there were other professionals in the area. Mr. Guerrieri responded that there was a man on th corner of Glen Carlyn who had a business in his home.

Mr. Hyland stated that in fairness to the applicant, he would move that the BZA defer the matter until there was a full Board particularly because of the staff report which was given to the BZA at the last minute. Chairman Smith inquired if there was anyone else to speak on the matter tonight. Mr. Hyland stated that there was a letter in the file from Mrs. Stuart Dawson. Mr. Guerrieri stated that if he had not said anything to the neighbors, they would not even know he was doing this. He stated that his business would be very low key.

Mr. William E. Clark of 1322 Nevius Street stated that he did not know Mr. Guerrieri but what he had to say had no personal aspect to it at all. Mr. Clark stated that he was speaking simply because he was a resident and lived ten houses down the street towards Lake Barcroft from Mr. Guerrieri's corner. Mr. Clark stated that he was opposed to the application because there was already a traffic problem. He stated that Nevius was not very wide. If people parked on both sides of the street, it would impede the traffic to the extent that it might injure someone. Mr. Hyland stated that the traffic was there presently. Mr. Clark stated that he imagined that people would park their cars in the street rather than going out into the traffic. Mr. Clark stated the neighbor next to Mr. Guerrieri had a car parked on the curb. He stated that it was just a matter of concern and it would depend on the volume of Mr. Guerrier's business as to how much of a problem it would be. Mr. Hyland stated that in the representations to the Board, Mr. Guerrieri had indicated that his clients would be by appointment only with five to ten people per day and that the business would be open from 9 A.M. until 5 P.M. for four days aweek and from 9 A.M. until 7 P.M., two days a week. The clients would be coming at different times during the day. Mr. Hyland stated that he did not have a problem with what Mr. Guerrieri was proposing. Mr. Hyland stated that he got the impression that the business would not cause a problem because it would be spread out through the day. Mr. Clark stated that if it worked out, that was fine. It would be a minimum of traffic flow and a minimal danger to the other motorists. If it didn't, then it would be undesirable. Mr. Hyland stated that the BZA had to assume that it would not be a problem. Mr. Hyland stated that if there were other people involved in the business and more people were coming and goin , it might have been a problem.

Mr. Clark stated that he had seen the area grow over the last 15 years and any additional traffic was not a good idea. Of course, he stated that no one could control it. However, his other consideration was that he did not like to see any commercial enterprise in the residential district. Mr. Clark stated that this business was an intrusion and could be an entering wedge for someone else who might want to set up a dental office or some other type business. Mr. Clark stated that this business would set a precedent and others would just move in and establish businesses and the neighborhood would no longer be a residential district.

Mr. Hyland inquired as to whether Mr. Clark would have a problem with the special permit being granted for an express period of time that would be consistent with the expressed plans of Mr. Guerrieri to get his business started and then at some future date to move it into commercial space. Mr. Hyland stated that Mr. Guerrieri had indicated that he would rather be in commercial space. He stated that he was sympathetic with Mr. Clark's position but he started out his business in his home. However, Mr. Hyland stated that he had the right to do so back then. Mr. Hyland stated that if the BZA controlled the length of time would that persuade Mr. Clark in some respects if the time frame was reasonable. Mr. Clark stated that it would bother him less but he had some doubts about the setting of the precedent.

Mr. Hyland asked the Board to defer the matter. Chairman Smith stated that he would like to recess the case to take additional testimony. Mr. Hyland stated that he wanted the right to ask additional questions if there was more testimony. The matter was recessed until January 19, 1982 at 10:30 A.M. to allow for additional testimony and for decision of a full Board.

//

Page 278, December 15, 1981, Scheduled case of

8:55 P.M. AREA LANDSCAPING, INC., appl. under Sect. 18-401 of the Ord. to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), located 4118 Olley Lane, R-1, Annandale Dist., 58-4((1))37A, 2.6304 acres, V-81-A-222.

Mr. Bryan Wates, Jr. informed the Board that he owned and operated a plant nursery on Olley Lane. His father had sold the house and a portion of his property to him. Mr. Wates stated that he was unable to acquire the other land and had pleaded with the builder to sell the log cabin to him. Mr. Wates stated that the builder would not hold the log cabin. Mr. Wates stated that he wanted to keep it for historical reasons. Mr. Wates stated that he went to the County to obtain a moving permit and found out that he would have to get a special exception to have the log cabin on his property. Mr. Wates stated that he planned to use the cabin for additional office space. He stated that it would not be an expansion of his use. Chairman Smith informed Mr. Wates that he had already won his special exception case from the Board of Supervisors. He stated that Mr. Wates needed to talk about the paving requirements. Mr. Wates stated that he had talked with Steve Reynolds of Design Review. Mr. Wates stated that he had pointed out a number of things that Mr. Reynolds did not have before him when he made his suggestion that the driveways be paved. Many of the points he had mentioned to Mr. Reynolds had validity.

Mr. Wates stated that the roadway that served Olley Lane was 12 ft. wide. The County wanted the roads expanded to 22 ft. Mr. Wates stated that his business was very low key. It was not the garden center atmosphere. He stated that he dealt with a lower percentage of people and did not get the heavy commercial business. Mr. Wates stated that he was told to keep all of the plants in the front low. Mr. Wates stated that he did not need the exposure as he got a certain amount of people who stopped in. Mr. Wates stated that he used almost every inch of his property for the growing of plant material. Mr. Wates stated that the County wanted his to increase the size of the internal roads on the property. Mr. Wates stated that they were not really road but walkways. He used them as aisles to get the plant materials onto trucks. The County wanted the aisles increased to 22 ft. and paved in a dustless surface. Mr. Wates stated that if he complied, it would take away space for trees. The increased four roads would reduce his acreage for planting and would develop more commercialism. It would make his business look more commerical if he was required to pave the aisles. It would also reduce the effectiveness of his business and reduce his planting beds and change the character of his business. Mr. Wates stated that the asphalt would come up to the cabin which he was trying to keep as an office. Mr. Wates stated that the cabin would be open to the public but would not be a money maker. Mr. Wates stated that the local school children would be invited to come and look at a real log cabin. He stated that he would leave the walls as it would have been finished. Mr. Wates informed the Board that he had grown up in the log cabin from 1954 on. He wanted to share it and did not want to lose his useful land. Mr. Wates stated that he was not expanding his business in any manner.

Mr. Wates informed the Board that there had been a subdivision built above him. There used to be trees there. He stated that there was not any runoff. There was a golf course installed with runoff after it was controlled. He stated that Starlit Estates had just been completed. It had the standard streets and gutters and a lot of asphalt and one storm sewer.

Mr. Wates stated that there were two lakes which also washed down into his pond. Mr. Wates presented the Board with a petition signed by his neighbors asking that the variance be granted.

Chairman Smith stated that the applicant had not talked about the dustless surface and the requirement for it. Mr. Wates stated that the hardship would be the loss of the use of the land due to the widening of the roads. He stated that he had not figured out how much square footage it would be but the road was 250 ft. long and he would have to pave it to 22 ft. wide. The present width was 12 ft. Mr. Wates stated that the loss of the land area would deprive him of future plant material. Mr. Wates stated that he kept his nursery in good condition and wanted it to be presentable. He stated that he made every effort to make it presentable to his neighbors. There was not any opposition to his request.

Mr. Hyland stated that he knew the Chairman was looking for a hardship in the case and he suggested that the Board of Supervisors was aware of the variance request when they reviewed the special exception case. Mr. Hyland stated that the two applications ran hand-in-glove. The Board of Supervisors did not have a problem with moving the log cabin to the site. Mr. Hyland stated that he felt it was a most proper request. Secondly, the only reason the BZA had the application before them for the variance was because of the log cabin and the fact that the County was making him meet the new regulations. Mr. Hyland stated that it was clear that there was water that came across Mr. Wates' property and the paving of the aisles was not going to retain the water but divert it. Finally, Mr. Hyland stated that Design Review had apparently backed off from the comments that they had made originally. Mr. Hyland stated that this issue came up a lot but this was a different kind of case. Apparently, the Board of Supervisors had realized that. Mr. Hyland stated that he knew the Chairman was looking for a hardship and he felt there was one. Chairman Smith stated that the Board of Supervisors probably was not aware of the variance request.

Mr. Covington stated that he had discussed the variance with Mr. Reynolds of Design Review. He said that there was a requirement for all nurserys to pave the aisles and only felt that it would keep the mud on the property. Chairman Smith stated that the Board should have everything in the record. He was concerned about getting one statement in the prepared staff report and then saying something else. Mr. Covington stated that the Board could waive any or all of the requirement as it saw fit. Chairman Smith stated that he understood the reason for wanting to preserve what was left of the log cabin. Mr. Wates stated that he was going to keep one entire wall in plaster. Chairman Smith stated that the only thing to be discussed was the requirement Mr. Wates was seeking to waive. Mrs. Day stated that was his request. She stated that Mr. Wates could not pave the farm or garden and grow anything. Chairman Smith wondered why Mr. Reynolds would go around telling people one thing and then changing it later. Mr. Wates stated that the last thing Mr. Reynolds had said of any significance was to pave the gravel from the little piece which was the buffer. Mr. Wates stated that was gravel at the present time. Mr. Reynolds felt that area should be paved. Mr. Hyland stated that he was not afraid to make a decision and had said it before. This was the first case he had seen that did not have a financial hardship as the reason for seeking the variance. Mr. Hyland stated that this was not a financial reason. It was a question of taking his property and was completely different from the other dustless surface variance requests. Mr. Hyland stated that he felt the Board had a reason for granting it. Chairman Smith stated that he did not have a problem with the request but felt that the area should be paved. Mr. Wates stated that he would be happy to pave the end of it.

Chairman Smith stated that before he voted on the matter, he wanted Mr. Reynolds to explain to the BZA why he made the statements that he did. Mr. Michael John Moscovis of 9344 Chestnut Knolls Drive spoke in support of the variance. He stated that his property was on the back side of Mr. Wates' property. Mr. Moscovis stated that there was a dirt road along their common border which ended on his property. Mr. Moscovis urged the Board to grant the variance request as Mr. Wates was a hardworking businessman and a good neighbor. He stated that this area still maintained the type of neighborhood where people knew each other's names and spoke to one another. He stated that any problems they had had with the nursery had been extremely minor. His retail business was an extremely minor part of his total business. Most of the business was done away on-site landscaping. Mr. Moscovis stated that to pave that area would take the whole area completely out of context and increase its commercialization. Speaking as an adjoining property owner, Mr. Moscovis was very much against the paving of any of the road, especially the one that went along his property.

Chairman Smith stated that he was concerned about this type of statements going on where the BZA was criticized for granting variances. Staff sent a report saying certain things. Chairman Smith stated that he wanted to get everybody together on the same ship. Chairman Smith stated that when the BZA was criticized, it bothered him tremendously. He was aware that the BZA tried to do its job. Chairman Smith stated that he had no problem with getting back to this matter at the next meeting but he wanted Mr. Reynolds to come in and straighten the situation out. In addition, the whole Board could participate in the discussion. Chairman Smith stated that if the staff was saying something different than what was in the staff report, he wanted it on the record. Chairman Smith stated that he felt the outlet road should be paved but he was not certain whether the outlet road was sufficiently wide enough to permit two cars to pass one another. He stated that the Board might want to take a look at the property. Chairman Smith stated that it should be paved up only to the parking area.

Page 280, December 15, 1981
AREA LANDSCAPING, INC.
(continued)

It was the consensus of the Board to defer the variance until January 5, 1982 at 12:30 P.M. Mr. Wates informed the Board that there was no problem with cars entering the present access road as there was a wide shoulder on Olley Lane. Chairman Smith stated that road went up to the parking area. Mr. Wates stated that it was still not a problem as it was a very short distance. He stated that someone would only only to wait a few seconds. Mr. Wates stated that the opening up of the road would expose his property to the street which he found was very unaesthetic. Mr. Wates inquired if the next meeting would be open for people to talk again. Mr. Wates informed the Board that he had only received the staff report the day before the public hearing. He had not been aware of the paving comments previously and had not time enough to prepare his remarks in just one day. Mr. Wates stated that his first and primary reason for requesting the variance was land absorption. His second reason was finances. Mr. Wates stated that this whole log cabin thing was coming out of his pocket. It had cost a fortune to move it.

//

Page 280, December 15, 1981, After Agenda Item

Arthur L. & Glena D. Coffing, V-81-M-217: The Board was in receipt of a letter from Charles and Carole Platt requesting that the variance application of Arthur L. & Glena D. Coffing be deferred from the January 5th meeting as the citizens in the area would not be able to attend. They were requesting that the BZA schedule the hearing to a night meeting at least thirty days subsequent to the January 5th meeting. It was the consensus of the Board to wait until the hearing on January 5th and decide the request at that time.

//

Page 280, December 15, 1981, After Agenda Item

Eleanor C. Thompson, V-80-P-080: The Board was in receipt of a letter from Mrs. Eleanor C. Thompson seeking a six month extension of her variance granted June 3, 1980 and previously extended until December 3, 1981. It was the consensus of the Board that it could not grant an extension as the request for extension had not been received prior to the expiration date. The Clerk was advised to so notify Mrs. Thompson and inform her it would be necessary to reapply for a variance and proceed through the public hearing process if she desired to pursue the matter.

//

Page 280, December 15, 1981, After Agenda Item

William P. & Alicia Menza, V-81-P-180: The Board was in receipt of a request from Mr. Menza seeking approval of a modification to the inside of his proposed garage which was approved by the BZA on November 10, 1981. The change requested was to allow a portion of the garage to be converted into a small family room or study. It was the consensus of the Board that even though there was not any opposition to the proposed garage at the public hearing, that the modification would require a public hearing to allow the neighbors an opportunity to respond to the new request in the proper fashion.

// There being no further business, the Board adjourned at 10:30 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith, Chairman

Approved: July 12, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 5, 1982. The following Board Members were present: Daniel Smith, Chairman and Ann Day. (Messrs. John DiGiulian, John Yaremchuk and Gerald Hyland were absent).

281

The Chairman opened the meeting at 10:30 A.M. and announced that the Board would have to reschedule all of its cases as there was not a quorum present. Chairman Smith stated that the Board was unable to select a new date and would have to notify everyone involved in the hearings. He stated that the Board would try to accommodate everyone's schedule as much as possible. Chairman Smith apologized for the inconvenience and stated it happened once a year where the Board was unable to conduct a meeting due to lack of a quorum.

10:00 A.M. BARRY M. SHERBAL, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 10.0 ft. from side lot line (15 ft. min. side yard req. by Sects. 3-207 & 10-105), located 6518 Spring Valley Dr., Indian Spring Subd., 72-3((5))62, Annandale Dist., R-2, 24,069 sq. ft., V-81-A-185. (DEFERRED FROM NOVEMBER 3, 1981 TO ALLOW APPLICANT TO OBTAIN REVISED PLATS).

As there was not a quorum present, the Board rescheduled the variance for Thursday, February 11, 1982 at 10:00 A.M.

//

Page 281, January 5, 1982, Scheduled case of

10:15 A.M. REVIEW OF SPECIAL PERMIT FOR FORTHWAY CENTER FOR ADVANCED STUDIES, INC., for a private school of special education granted on February 6, 1979, for a period of three years with a review by the Board of Zoning Appeals having the right to extend the permit, located 10415 Hunter Station Rd., 27-2((1))21, Centreville Dist., 11.89 acres, R-E, S-207-78.

As there was not a quorum present, the Board rescheduled the review for Thursday, February 11 1982 at 10:15 A.M.

//

Page 281, January 5, 1982, Scheduled case of

10:30 A.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195. (DEFERRED FROM NOVEMBER 10, 1981 BECAUSE OF PENDING SPECIAL EXCEPTION).

As there was not a quorum present, the Board rescheduled the variance for Thursday, February 11, 1982, at 11:00 A.M.

//

Page 281, January 5, 1982, Scheduled case of

10:45 A.M. BETTY DAVIS, appl. under Sect. 18-401 of the Ord. to allow resubdivision into 5 lots with proposed lot 4 having width of 12 ft. and existing dwelling on proposed lot 2 being 20 ft. from a street line (80 ft. min. lot width req. by Sect. 3-306 and 30 ft. min. front yard for dwelling req. by Sect. 3-307), located 7833, 7901 & 7905 Shreve Rd., 49-2((1))137, 140 & 141, Providence Dist., R-3, 102,351 sq. ft., V-81-P-215.

As there was not a quorum present, the Board rescheduled the variance for Thursday, February 11, 1982 at 11:15 A.M.

//

Page 281, January 5, 1982, Scheduled case of

11:00 A.M. THOMAS H. MAGNESS, III, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport into a garage 6.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 9504 Rockport Rd., 38-2((35))3, Centreville Dist., R-3, 11,579 sq. ft., V-81-C-214.

As there was not a quorum present, the Board rescheduled the variance for Thursday, February 11, 1982 at 11:30 A.M.

//

Page 282,January 5, 1982, Scheduled case of

11:15 A.M. NICHOLAS J. ZAVOLTA, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5.5 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), located 2026 Dexter Dr., R-4, Dranesville Dist., 40-1((20))40, 8,625 sq. ft., V-81-D-216.

As there was not a quorum present, the Board deferred the variance until Thursday, February 11, 1982 at 11:45 A.M.

//

Page 282, January 5, 1982, Scheduled case of

11:30 A.M. ARTHUR L. & GLENA D. COFFING, appl. under Sect. 18-401 of the Ord. to allow subdivision into 5 lots and 2 outlots with proposed lots 1, 2, 3, 4 & 5 having width of 3.60 ft. (80 ft. min. lot width req. by Sect. 3-306), located Kendale Rd., R-3, Mason Dist., 60-3((24))8 & 60-3((31))A, 2.407 acres, V-81-M-217.

As there was not a quorum present, the Board rescheduled the variance for Tuesday Night, February 23, 1982 at 8:15 P.M.

//

Page 282, January 5, 1982, Scheduled case of

11:45 A.M. CHILDREN'S WORLD, INC., appl. under Sect. 3-103 of the Ord. for a child care center (approx. 128 children), located intersection of Oak St., (Rt. 769) and Arden St., (Rt. 3450), 39-4((1))108A, Providence Dist., R-1, 87,120 sq. ft., S-81-P-073. (DEFERRED FROM NOVEMBER 24, 1981 FOR NOTICES & POSTING).

As there was not a quorum present, the Board rescheduled the special permit for Tuesday Night, February 23, 1982 at 8:30 P.M.

//

Page 282, January 5, 1982, Scheduled case of

12:00 NOON SOUTHERN IRON WORKS, INC., appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that a front yard is required along Iron Place and special exception approval is required for crane runway, located 6600 Electronic Dr., I-6, Annandale Dist., 80-2((1))33, 7.3818 acres, A-81-A-013.

As there was not a quorum present, the Board rescheduled the appeal for Thursday, February 11, 1982 at 10:30 A.M.

//

Page 282, January 5, 1982, Scheduled case of

12:10 P.M. FIRST ASSEMBLY OF GOD, appl. under Sect. 3-303 of the Ord. for construction and operation of a church and related facilities, located 5225 Backlick Rd., 71-4 ((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-078. (DEFERRED FROM NOVEMBER 17, 1981 AND DECEMBER 8, 1981 FOR NOTICES).

As there was not a quorum present, the Board rescheduled the special permit for Tuesday, February 2, 1982 at 12:45 P.M.

//

Page 282, January 5, 1982, Scheduled case of

12:20 P.M. ANNANDALE-SPRINGFIELD CHRISTIAN ACADEMY, appl. under Sect. 3-303 of the Ord. for a private school of general education and child care center, located 5225 Backlick Rd., 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-079. (DEFERRED FROM NOVEMBER 17, 1981 AND DECEMBER 8, 1981 FOR NOTICES).

As there was not a quorum present, the Board rescheduled the special permit for Tuesday, February 2, 1982 at 1:00 P.M.

//

Page 283, January 5, 1982, Scheduled case of

12:30 P.M. AREA LANDSCAPING, INC., appl. under Sect. 18-401 of the Ord. to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), located 4118 Olley Ln., R-1, Annandale Dist., 58-4((1))37A, 2.6304 acres, V-81-A-222. (DEFERRED FROM DECEMBER 15, 1981 FOR ADDITIONAL INFORMATION FROM DESIGN REVIEW AND DECISION OF FULL BOARD).

283

As there was not a quorum present, the Board rescheduled the variance for Tuesday Night, February 23, 1982 at 8:00 P.M.

//

Page 283, January 5, 1982, After Agenda Item

Rainwater: Chairman Smith announced that the Board of Zoning Appeals would have to redefine its reasons for upholding the decision of the Zoning Administrator in the Rainwater appeal which was under litigation. Chairman Smith stated that Judge Middleton was handling the case. Chairman Smith stated that the Board needed guidance on a lot of questions.

// There being no further business, the Board adjourned at 12:35 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: July 12, 1983

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 12, 1982. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Gerald Hyland and Ann Day. (Mr. John Yaremchuk was absent).

The Chairman opened the meeting at 10:20 A.M. and Mrs. Day led the prayer.

ELECTION OF OFFICERS: Mr. Hyland stated that in reviewing the Board's agenda for the meeting, there was the Election of Officers. In view of the fact that the Board did not have its full complement, Mr. Hyland moved that the BZA continue that item on the agenda until the next meeting of the Board when there was a full Board present. He further moved that the Board continue with its present officers in their positions until the next meeting of a full Board when the election could be held. Mrs. Day seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

//

Page 284, January 12, 1982, Matters

Mr. Hyland stated that it was his understanding that the Board had received communication through counsel to the BZA from the Circuit Court, Judge Middleton, asking the Board for a statement of reaons surrounding the appeal of P. Ray Rainwater, Et. Al. Mr. Hyland stated that the Board had met to consider that request. Mr. Hyland stated that he had been given a copy of a letter dated January 12, 1983 which was proposed to be sent to Judge Middleton. Mr. Hyland stated that he had reviewed the letter and was prepared to move the Board to direct the Chairman to send the letter. In addition, Mr. Hyland included a request that he be given an opportunity to indicate by way of his signature on the letter that he concurred with the matters in the letter which gave the basis of the Board's decision. Mrs. Day seconded the motion and it passed by a vote of 3 to 0 with 1 abstention (Mr. DiGiulian) (Mr. Yaremchuk being absent).

//

Page 284, January 12, 1982, Matters

Mr. Hyland stated that there was a matter of reappointment of one of the Board members whose term was expiring, that member being Mr. John DiGiulian. Mr. Hyland stated that he could not say enough about Mr. DiGiulian's contributions to the Board. Accordingly, he moved that the Board recommend Mr. DiGiulian's reappointment to the BZA for another term. Chairman Smith stated that he was directing that a letter to to the senior circuit judge endorsing the reappointment of Mr. DiGiulian for a full term. Mrs. Day seconded the motion. Mrs. Day expressed her appreciation to Mr. DiGiulian as he had been quite helpful when she came on the Board. The motion passed by a vote of 3 to 0 with 1 absention (Mr. DiGiulian) (Mr. Yaremchuk being absent).

//

Page 284, January 12, 1982, Recess

Chairman Smith announced that the Board had just received a report which was fairly comprehensive which had been requested by the Board in one of its cases several weeks ago. He stated that the Board had not had an opportunity to review the report. Chairman Smith stated that the Board would recess for ten minutes to review the report and digest it.

At 10:30 A.M., the Board recessed to review the report. It reconvened at 11:25 A.M. to continue with the scheduled agenda.

//

Page 284, January 12, 1982, Scheduled case of

10:00 A.M. OLAM TIKVAH PRESCHOOL, INC., appl. under Sect. 3-103 of the Ord. to permit continued operation of an existing nursery school, located 3800 Glenbrook Road, Sunny Hills Subd., 58-4((9))17A, 17B, 18A & 18B, Providence Dist., R-1, 4.5205 ac., S-81-P-068. (DEFERRED FROM NOVEMBER 17, 1981 FOR REPORT FROM ZONING ADMINISTRATOR'S OFFICE).

Chairman Smith announced that the Board had just reviewed the report and were ready to proceed with the decision. He stated that the information the Board had received had been very comprehensive from both the applicant and the Zoning Administrator. Chairman Smith asked if there were any additional remarks before the Board proceeded. Mrs. Enid Leiss, the applicant, had a few comments. She presented the Board with community support for the day care center. She stated that at the last hearing a suggestion had been made that the day care center be relocated to the Jewish Community Center. She presented a letter which referenced the fact that the community center was not religously oriented. Mrs. Leiss state

that the preschool was religously oriented. She presented the Board with another letter from the Woodson Area Council which had voted unanimously to support the preschool. Mrs. Leiss stated that there was not any school like theirs in the County as they were a conservative Jewish preschool. Mrs. Leiss stated that the Board already had the other letters of support including one from Mr. Hammack of the Mantua Citizens Association. Mr. Hammack's letter indicated that the Mantua Citizens Association did not have a problem with the preschool as long as they continued operating as they had in the past. Mrs. Leiss stated that the numbers had been stable as far as the number of children. She stated that the enrollment only went up depending on the ages.

In response to questions from the Board, Mrs. Leiss stated that the average enrollment was never more than 50 children per session. Chairman Smith stated that Mrs. Leiss had previously indicated that they never exceeded a maximum of 40 children per day. Mrs. Leiss stated that it was never more than 40 per session. Chairman Smith stated that the Board needed to regulate the total number at any one time. He stated that Mrs. Leiss had previously indicated that the maximum enrollment was 66 students. Mrs. Leiss stated that was only the total for this year. She stated that enrollment was down this year from other years. She stated that they had 69 students at the start of the school year. Presently, there were only 66 students but another child was starting next week.

Mr. Hyland inquired as to how the preschool differed from the religious instruction given by the church. Mrs. Leiss stated that the preschool had a separate director and a separate set of by-laws with a separate parent body and a separate corporation. However, they followed the same religious instruction. The preschool was run by the parents by housed by the synagogue. The religious program was the same. She stated that the students of the preschool were then prepared to feed into the synagogue's program. Chairman Smith inquired if the preschool corporation had a lease with the synagogue. Mrs. Leiss stated that the synagogue housed them for free but the preschool gave a generous donation every year to the synagogue. Chairman Smith inquired as to how it was handled. Mrs. Leiss stated that the preschool was non-profit but the donation was set up in the budget. She stated that the preschool was happy to meet the donation every year. Mrs. Leiss stated that most of the money went back ton the additional materials. Mr. Hyland inquired if the donation was shown as an expense line item or shown as a contribution in the budget. He inquired as to the relationship of the amount of income to the donation or whether it was the same amount donated every year. Mrs. Leiss stated that it was not the same amount every year. The preschool tried to raise the amount every year as the synagogue was very good to them.

Mr. Hyland stated that when the synagogue came to the Board seeking to expand its facilities in terms of the new building, as part of the request, it had indicated that the preschool would move into the new structure. Mr. Hyland inquired if that was still the plan. Mrs. Leiss stated that it was her understanding that they would move into the new building. She stated that it was up to the synagogue as far as what they wanted to do with the property at all times. She stated that they had discussed it at length as to the size of the preschool. Mrs. Leiss stated that they had always been concerned with the quality of the education as they educated the parents as well as the children. Mrs. Leiss stated that the preschool did have to do some advertising in order to meet its federal guidelines. She stated that they were usually filled up in March for the following September. Mr. Hyland inquired if the extent of the activity would remain the same when the preschool moved into the synagogue. Mrs. Leiss stated that the preschool needed flexibility as far as scheduling.

Mr. Hyland asked that since the preschool had opened in 1973, what had been the maximum number of children handled on a weekly basis. Mrs. Leiss stated that the maximum would have been 77 students distributed throughout the week with several classes. She stated that they had some three day classes and some two day classes and some five day classes. Mrs. Leiss stated that the total number of children never exceeded 40 at any one time.

Mr. William Bryson of 3821 Chantal Lane in Fairfax spoke in opposition. He represented the majority of the Sunny Hills development and Skybrook. He stated that they realized this was a zoning board and not a school board. The citizens had some concern about the use and the facility and the location. Mr. Bryson stated that they had presented a petition which indicated the views of the citizens. Mr. Bryson stated that in visiting the homes for signatures, it had taken considerable time as people wanted to talk about their concerns. He stated that 100% of the people were unanimously against the preschool. Mr. Bryson stated that the letters in support contained addressed in Burke, Springfield and Herndon. Only three had addresses within a three mile radious of the synagogue.

Mr. Bryson informed the Board that the County Code had been set up to limit what could be built. The religious use placed too much of a burden on the neighborhood. Mr. Bryson stated that this was not a small house of worship as proposed but a congregation having over 500 members and still growing. Mr. Bryson stated that the operation of the preschool could not be approved on that basis.

Mr. Bryson asked to make some comments about the report requested by the Board. He stated that the information came for observations but mostly from information provided by the syangogue. He stated that none of the citizens were asked to comment. Mr. Bryson stated

that on recent Holy Days, there were an excess of 140 cars per session parked in the community. He stated that he was not talking about Picket Shopping Center or the other areas and did not count the cars parked on the synagogue lot. Mr. Bryson stated that the expansion for the religious school did not consider the recent expansion approved by the Board where the religious school could operate with up to 250 students per session. Mr. Bryson stated that using the total numbers given to the Board and approved by the Board, a total of 500 students could be enrolled for five days a week. Mr. Bryson stated that the study did not reference the increased cars even though it referenced parking. Mr. Hyland inquired if Mr. Bryson was taking an entire day and adding all of the activities. Mr. Bryson stated that he was only taking the religious school of 160 students per session. He stated that you would arrive at a total of 800 if you included the social events, bridge, etc. Mr. Bryson stated that the cars had exceeded the capacity of the parking lot. Every Thursday night there was Bridge at the synagogue. Everyone used Denise Lane on that night for parking. Also not included in the study were many other social events held at the synagogue.

Mr. Bryson stated that there was a comment about pedestrian facilities in the report. He stated that there were not any pedestrian facilities and he walked that route every evening. He was afraid for children to walk down the street. It was possible if they took special care but children were not that careful.

With respect to the widening of the road, the community did not support that proposal as they did not want an increase in traffic. The widening would only provide more parking and more access for more people. Mr. Bryson stated that they already had problems with the people and did not want more problems. Mr. Bryson stated that the citzens' letter pertained to the people who were the most greatly affected. He urged the Board to read the letter before voting on the matter. He asked that the synagogue be limited to religious uses only.

Mr. Hyland asked to be able to respond to Mr. Bryson's last comment. Mr. Hyland stated that what this special permit application had done was raise many issues and concerns that had nothing to do with the preschool but the activities of the synagogue. The citizens were asking the Board to look at it as a whole package. Mr. Hyland stated that the bridge issue had just come to light. He stated that he did not recall that being an issue when the synagogue had come in for expansion. Mr. Hyland stated that he had a problem with that going on as it created additional traffic problems in the community. He stated that there had been some testimony about the art shows and he believed that the synagogue had agreed to eliminate those activities. Mr. Hyland stated that he was sensitive to the citizens but the school had been operating for a long time. Mr. Hyland stated that what he was trying to zero in on was whether it was the school itself or the other activities causing all of the problems.

Mr. Bryson stated that the community was made up of very nice people. He stated that he had visited each and every one of the homes the previous week. Mr. Bryson stated that he had lived in the community for 17 years. He stated that the citizens were not a bunch of hard heads. He stated that when the synagogue came to build their facility for 120 families, the community had said okay. Now the facility had grown and it was not recognizable any more. Mr. Bryson stated that it was now a monster that the Board had to deal with and the citizens were throwing the problems back to the BZA.

Mr. Hyland stated that when the synagogue came in for expansion, he did not recall any testimony being raised about the preschool being a problem. Mr. Bryson stated that it had come up as a side comment. Someone on the Board had told the citizens that there was a special permit for the preschool. Mr. Bryson stated that the problem was bigger than the preschool and he knew that the BZA could not solve it but they could peck away at it. Mr. Bryson stated that the community was being taken advantage of.

During rebuttal, Mrs. Leiss stated that the preschool was a separate entity from the synagogue. Mrs. Leiss stated that she sympthasized with the community but they were dealing with this as one issue. Mrs. Leiss stated that the preschool had never received any complaint. The Mantua Citizens Association did not find any objection. With regard to the traffic study, she indicated that the preschool was not asked to comment on it. However, she felt it was objective and accurate. Mrs. Leiss stated that she was only concerned with the traffic for the preschool. She stated that the children were not out on the street when the traffic for the preschool was coming and going. Frost and Woodson started school early in the morning. Six children from the elementary school were not endangered by six carpools. She stated that their drivers were not a threat.

With regard to the playground, it was true that 100 sq. ft. was required per child. However, she stated that they only had one class out at a time. The maximum number would be sixteen children. They could be accommodated on the side and the rear of the building and were not even in the front. The teachers enforced the regulations. The Health Code could not issue a permit that violated the County Ordinance. She stated that in spite of all the concerns, the Health Department had issued a permit and the school had not violated any zoning regulation. This was a small school. The preschool was not seeking to get anything but a conservative religious education for its children.

287

Chairman Smith informed Mr. Stahl that the Board would like to see the preschool continue but were concerned about the impact on the community. The Bridge club, Bingo parties, art clubs, etc. were beginning and were having a tremendous impact on the community. Chairman Smith stated that in all fairness to everyone, the synagogue should begin to think about reducing the outside activities like Bridge. Mr. Stahl stated that the synagogue had told the Bridge group that it wanted out of its contract immediately. The Bridge Club had been looking for more space for the past 2½ months. Mr. Stahl stated that they were trying to get out as quickly as possible. The synagogue did not want to be sued and were under some obligation to honor the agreement.

Chairman Smith stated that was one of his concerns where the synagogue leased the property to the Bridge group. He stated that the County had taken a broad view as far as religious activities were concerned. The synagogue had a right to use the property but when they started leasing to outside groups, it did not have that right under the special permit. Chairman Smith asked that the Zoning Administrator investigate this matter.

Mr. Stahl stated that the synagogue was making every effort to get the Bridge Group out. He stated that if the Zoning Administrator wanted to rule that the Bridge Group could not be there, it might get them out quicker. Mr. Stahl stated that Bingo was on Sunday night. The Bingo had not exceeded 75 to 80 people on a Sunday night. Chairman Smith stated that the Bingo permits had to be renewed every year. He stated that the main concern was the Bridge Club and he stated that the synagogue had to reduce that use. He stated that the synagogue might want to concern themselves with some of the other activities taking place also. Mr. Stahl stated that the other activities were associated with the synagogue. He stated that the sisterhood held the art show once a year in the fall as a fund raiser. The men's club held a dinner once a year. The only weekly activity was the Bridge and Bingo. Mr. Stahl stated that the synagogue had a permit for the Bingo. Chairman Smith stated that the Board was aware of the fact now that there had been tremendous growth in the synagogue. Chairman Smith stated that it should be the synagogue's prime concern to curtail any other uses that were not directly associated with the religious activities. Mr. Stahl stated that in all of their activities, the one thing that was constantly asked was with respect to the parking and the impact on the neighbors. Mr. Stahl stated that the synagogue wanted the Bridge people out and were aware of the impact on the neighbors.

Mr. Bryson informed the Board that there were other activities that were non-religious like square dancing and aerobic dancing. Chairman Smith stated that he was sure the synagogue was aware of it and would take consideration of it. Chairman Smith stated that some churches promote youth dances. Chairman Smith stated that it should be something for the Zoning Administrator to look into if there was any problem with it.

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-P-068 by OLAM TIKVAH PRESCHOOL, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to permit continued operation of an existing nursery school located at 3800 Glenbrook Road, tax map reference 58-4((9))17A, 17B, 18A & 18B, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on November 17, 1981 and deferred until January 12, 1982 for additional information; and

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

1. That the owner of the property is the Congregation Olam Tikvah Church.
2. That the present zoning is R-1.
3. That the area of the lot is 4.5205 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

R E S O L U T I O N

288

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum enrollment shall not exceed a total of 67 children with a maximum of 40 children allowed on the premises at any one time.
8. The hours of operation shall be 9:00 A.M. to 3:15 P.M., Monday through Friday.
9. This special permit is granted for a period of two years.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 288, January 12, 1982, Scheduled case of

10:10 A.M. HERBERT SPEARS/ACTION SHEET METAL COMPANY, appl. under Sect. 18-401 of the Ord. to allow construction of addition to warehouse building to 10 ft. from I-95 right-of-way line (75 ft. min. distance for industrial building from interstate highway right-of-way req. by Sect. 2-414), located 5617 Vine St., I-5, Lee Dist., 81-2((4))33, 17,202 sq. ft., V-81-L-220.

Mr. John Harris of 1483 Arkansas Court informed the Board that the County was experiencing more growth. He stated that the proposed addition would provide adequate storage and give his company more room to operate machinery which was used in the making of their products. Mr. Harris stated that if they did not add on to the existing building, they would have to operate two divisions. That would be a problem as their insulators would have to come by this location to pick up materials. At the present time, they were able to pick up and load materials and return at the end of the day. Mrs. Day questioned the 10 ft. from the right-of-way. Mr. Harris explained that the addition would be at least 75 to 100 ft. from I-95. Mrs. Day inquired if there was anything else in the rear of the property. Mr. Harris stated that there was a hill there and the business was below the beltway.

There was no one else to speak in support and no one to speak in opposition.

Page 288, January 12, 1982 Board of Zoning Appeals
HERBERT SPEARS/ACTION SHEET METAL COMPANY

R E S O L U T I O N

In Application No. V-81-L-220 by HERBERT SPEARS/ACTION SHEET METAL COMPANY under Section 18-401 of the Zoning Ordinance to allow construction of addition to warehouse building to 10 ft. from I-95 right-of-way line (75 ft. minimum distance for industrial building from interstate highway right-of-way required by Sect. 2-414) on property located at 5617 Vine Street, tax map reference 81-2((4))33, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning App-als adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

R E S O L U T I O N

1. That the owner of the subject property is the applicant.
2. The present zoning is I-5.
3. The area of the lot is 17,202 sq. ft.
4. That the applicant's property has a double front yard requirement. It appears that there is no opposition from any of the abutting property owners. And from a review of the plat, it appears that the location as proposed is the only practical location. To deny the variance would deprive the applicant of the reasonable use of the property and it acquaints to a hardship of confiscation.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Chairman Smith)(Mr. Yaremchuk being absent).

Page 289, January 12, 1982, Scheduled case of

10:20 A.M. JOHN D. & CAROL G. KELLY, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling to 10.7 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 and 2-412), located 3101 Cobb Hill Ln., R-1, Centreville Dist., 36-3((11))43, 20,007 sq. ft., V-81-C-219.

Mrs. Carol Kelly of 3101 Cobb Hill Lane in Oakton informed the Board that her lot was irregularly shaped and was long and narrow. The location of the house was based on where the septic tank could go. Mrs. Kelly stated that it appeared a retention pond was planned originally but then deleted. Mrs. Kelly stated that her property went back to County parkland and they maintained the grass. She stated that the houses on either side of her would be ablt to have a deck of comparable size without a variance. She informed the Board that her home had sliding glass doors from the time the house was constructed. It had been a selling point that the possibility of a deck existed. She stated that the sliding glass door was bolted and had never been opened. She stated that she would like to be able to build a deck.

In response to questions from Mrs. Day, Mrs. Kelly stated that the land behind her was parkland. Mrs. Day stated that the deck was in the middle of the yard at the back. She asked if there was a problem with the door. Mrs. Kelly responded that the door was bolted. She stated that they had planned to construct a deck when they purchased the house. She stated that in talking to builders, it was determined that a variance was necessary. Mrs. Day asked if there was any comments from the neighbors. Mrs. Kelly stated that her one neighbor had a deck and the other one wanted one.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-C-219 by JOHN D. & CAROL G. KELLY under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 10.7 ft. from rear lot line (19 ft. minimum rear yard required by Sects. 3-107 & 2-412) on property located at 3101 Cobb Hill Lane, tax map reference 36-3((11))43, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

RESOLUTION

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 20,007 sq. ft.
4. That the applicant's property is exceptionally irregular in shape in that it comes to an indented point in the rear of the property and has an unusual topographic problem and has an unusual condition in the location of the existing buildings on the subject property. The septic tank is located in the front yard and the property has utility easements on both sides. The applicant has a problem in that there is not steps for access to the rear yard from the back of the dwelling even though there exists a sliding glass door on the second level.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Chairman Smith)(Mr. Yaremchuk being absent).

Page 290, January 12, 1982, Scheduled case of

10:30 A.M. JUBE B. SHIVER, SR., appl. under Sect. 18-401 of the Ord. to allow subdivision into 4 lots with proposed lots 1, 2 & 3 each having width of 10 ft. (80 ft. min. lot width req. by Sect. 3-306), located 8116 Holland Rd., R-3, Mt. Vernon Dist., 102-1((1))21 & 21B, 70,830 sq. ft., V-81-V-218.

Mr. Jube Shiver, Sr. of 2216 Shiver Drive informed the Board that his property was narrow and did not allow him to construct a street to the requested lots. He stated that he was proposing to have three pipestem lots in order to access the lots in the rear. In response to questions from the Board, Mr. Shiver stated that he had owned the property since the early 60s.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-V-218 by JUBE B. SHIVER under Section 18-401 of the Zoning Ordinance to allow subdivision into 4 lots with proposed lots 1, 2, & 3 each having width of 10 ft. (80 ft. minimum lot width required by Sect. 3-306), on property located at 8116 Holland Road tax map reference 102-1((21 & 21B, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 70,830 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including long and narrow and it meets the development plan for the neighborhood.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Chairman Smith)(Mr. Yaremchuk being absent).

Mr. Hyland announced that the application of Mr. Shiver came from his area. He stated that he was pleased to see this kind of application coming before the Board. Mr. Hyland stated that was what was needed in the Gum Springs area and he congratulated Mr. Shiver on his plan.

//

Page 291, January 12, 1982, Scheduled case of

10:40 A.M. ROGER M. BREWSTER, appl. under Sect. 18-401 of the Ord. to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102) located 11033 Oakton Rd., R-1, Centreville Dist., 47-3((1))54, 21.596 acres, V-81-C-221.

As there was a pending special exception to be heard by the Board of Supervisors, the BZA deferred the variance application until February 11, 1982 at 12:15 P.M.

//

Page 291, January 12, 1982, Recess

At 12:30 P.M., the Board recessed for lunch and did not reconvene until 1:40 P.M. to continue with the scheduled agenda.

//

Page 291, January 12, 1982, Scheduled case of

10:50 A.M. RYLAND GROUP, INC., appl. under Sect. 18-406 of the Ord. to allow porch to remain 23.86 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-307), located 9821 Summerday Dr., R-3, Springfield Dist., 88-1((13))47, 20,015 sq. ft., V-81-S-223.

Mr. John Veatch of Markham, Va. stated that he was the technical representative for Ryland Homes. Mr. Veatch informed the Board that the error came about because Ryland Homes felt that they had a permit to construct a house with a front porch on that particular lot. The site plan that was approved did not include the porch. Mr. Veatch stated that the house was staked out without the porch but constructed with the porch. The lot was irregularly shaped and very shallow and long. Mr. Veatch stated that there was not any way to place that house on that lot and have a porch on it.

In response to questions from the Board, Mr. Veatch stated that the builder had constructed the porch. The house that was constructed on the lot was referred to as a Hamilton. That particular type of house had a variation. One of the variations was an 8 ft. porch on the front. On the site plan, it referred to only the Hamilton and did not specify whether it would have a porch or not. Mrs. Day stated that the plat showed the porch on the final approval. Mr. Veatch stated that plat was the as built and not the house location plat. Mrs. Day inquired if the house was occupied at the present time. Mr. Veatch stated that it

was not occupied but the house had been sold. It was awaiting final decision. The purchaser was in from California and was awaiting a decision before moving his family in. Mr. Hyland inquired if the sales contract had a contigency clause upon the variance being obtained. Mr Veatch stated it did not have such a contigency.

Chairman Smith inquired if the purchaser was aware of the need for a variance at the time of contract. Mr. Peter Pickin, Ryland Homes Productions Manager, stated that in the process of their sales, they sold prior to the actual building. Once the mortgage was approved, construction began. Mr. Pickin stated that the error was made in the construction. He stated that settlement was based on the Board's decision. Mr. Hyland inquired as to the impact if the variance were not granted. Mr. Pickins stated that he did not know the alternatives as far as construction. He was sure that the sale would be cancelled. The purchaser would be concerned after having moved his family and furniture from California. Mr. Hyland asked if the contract would be honored by both parties if the variance were not granted. Mr. Pickins stated that they would not be able to close on this house.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. V-81-S-223 by RYLAND GROUP, INC. under Section 18-406 of the Zoning Ordinance to allow porch to remain 23.86 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-307) on property located at 9821 Summerday Drive, tax map reference 88-1 ((13))47, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board of Zoning Appeals on January 12, 1982; and

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

That non-compliance was the result of an error in the location of the building subsequent to the issuance of a building permit and was not the fault of the contract purchaser and it would cause great difficulty in the removal of the porch which is an asset to the house and the area.

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

1. That the granting of this variance will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of the other property in the immediate vicinity.

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

This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Chairman Smith)(Mr. Yaremchuk being absent).

Page 292, January 12, 1982, Scheduled case of

11:00 A.M. GARY S. IBACH, appl. under Sect. 18-401 of the Ord. to allow construction of a greenhouse addition to dwelling to 9.7 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 4010 Elizabeth Ln., 58-4((8))100, R-1, Annandale Dist., 21,750 sq. ft., V-81-A-225.

Mr. Gary Ibach of 4010 Elizabeth Lane in Annandale informed the Board that he wanted to install a solar greenhouse on his house and had found out there was a 20 ft. setback. Mr. Ibach stated that there was a storm drainage easement across the back of his property. He stated that Mr. Smith and Mr. Williams from the County would not allow him to build a permanent structure there. He stated that there was frame deck in that location which the builder had constructed. Mr. Ibach stated that the location as shown was the only one suitable as far as the Department of Public Works was concerned. Mr. Ibach had been informed by the County that they would not have given a permit for the deck today. Mr. Ibach stated that he had offered a trade-off of removal of the deck in exchange for the greenhouse but it had not worked out.

Mr. Hyland inquired if there was anywhere else in which to construct the greenhouse. Mr. Ibach responded that the proposed location was the only location. He stated that he had investigated the rear of the house as it would be the least expensive and would not require a variance. However, it had been unacceptable to the Department of Public Works.

There was no one else to speak in support of the application. Mr. Fred Ingham of 4014 Elizabeth Lane stated that he lived next door to Mr. Ibach. Mr. Ingham stated that he had submitted a letter which was in the file. He stated that his remarks were in addition to the letter. As background, lots 98, 99 and 100 were developed about the last of the Lee Forest development. Each lot was the same size, 21,000 sq. ft. with a 100 ft. width. He stated these lots were not the standards but met the R-1 frontage and side yard requirements. The lots were not exceptionally narrow or steep. There was nothing depriving any of the three owners as they all had reasonable use of their property. Mr. Ingham stated that the storm drainage easement ran across all three lots. There was an agreement signed by each of the three owners when they purchased their lots. Mr. Ingham stated that granting a variance would say that any of the three lots could request a variance under the same conditions. This granting would result in an addition which would be out of proportion. It was beyond any minimum that would afford relief if any land use hardship was found. The variance was requested to provide southern exposure. Mr. Ingham stated that it was shaded by his house and was shaded during the winter months. During periods of no sun or light, the greenhouse would require heat for the living area or the plants. Mr. Ingham stated that there were other alternatives. Many other products were available which would not require a variance and still provide solar heating. The collectors could be added to the side. Mr. Ingham stated that there was adequate space at the rear of the lot for a detached greenhouse as large as the one proposed and it would not require a variance. Mr. Ingham stated that the alternatives were practical and did not involve a hardship.

In response to questions from the Board, Mr. Ingham stated that his house was 20 ft. from the side lot line. There was no one else to speak in opposition.

During rebuttal, Mr. Ibach stated that he had two children. He stated that the Department of Public Works was consulted about the location of the greenhouse at the rear of the house and it was denied. No permanent structure was allowed on the easement. Mr. Ibach stated that he would only be allowed a patio 10 x 18. The greenhouse would be infringing on the easement.

Chairman Smith stated that Mr. Ibach had reasonable use of his land as his present dwelling contained a garage. Now, he was asking to have an addition for a solar heating greenhouse and playarea for his family. Chairman Smith stated that the applicant had to justify why his case was unique. All three lots had the same 20 ft. setback and had the storm drainage easement. Mr. Iback stated that none of the other lots had the easement as close as his. The other lots had the easement 10 to 15 ft. behind the lot. Mr. Ibach stated that his lot had a lot of storm drainage easement which was not usable space for him. The solar device would be partially shaded but not completely shaded by the house next door. Chairman Smith inquired as to why the solar unit could not be attached to the top of the house. Mr. Ibach stated that he could get a different unit but he would not gain the play area or the usable space for the house.

Page 293, January 12, 1982 Board of Zoning Appeals
GARY S. IBACH

R E S O L U T I O N

Mr. DiGiulian moved that the Board grant the variance as the lot was a substandard lot as to lot width and lot area and had an unusual hardship in the storm drainage easement which wrapped around the house and took up a lot of land in the middle of the yard. Mr. DiGiulian's motion died for lack of a second.

Mrs. Day inquired if the Board could defer the matter until there was a full Board. Chairman Smith stated that he could not support the variance as there were two houses similar to this case. He stated that Mr. Ibach had reasonable use of the land. The solar device could be installed on top of the house. However, it would deprive him of a greenhouse. Mrs. Day stated that Mr. Ibach did have a frame deck. Chairman Smith stated that was permitted and the applicant could build a freestanding device without the greenhouse. He would be allowed to build a freestanding open solar device. Mr. Covington stated that the property was substandard to the degree that it was really a R-2 zone.

Mr. Hyland moved that the Board defer the matter until there was a full Board. Mrs. Day seconded the motion and it passed by a vote of 3 to 1 (Chairman Smith). The variance was deferred until February 11, 1982 at 12:30 P.M. for decision only.

//

11:15 A.M. SHIRLEY L. SHENKER, appl. under Sect. 3-203 of the Ord. to amend S-80-V-102 for home professional office (psychologist) to permit continuation of the use beyond its present term which expires Jan. 6, 1982, located 7210 Beechwood Rd., R-2, Mt. Vernon Dist., 93-3((4))219, 18,704 sq. ft., S-81-L-087.

Mr. Henry Shenker of 7210 Beechwood Road informed the Board that at the hearing a year ago, the permit was granted to allow a trial operation to determine the effects on the community. For the record, Mr. Shenker reviewed the operation. He stated that his wife was a clinical psychologist and was limited to couples only. The practice consisted of talking to clients. There was a thirty minute period between clients. Only one car would be parked at a time. There was never more than fifteen sessions per week. The hours of operation were from 8 A.M. until 8 P.M. The clients entered the house from the side and were met by Dr. Shenker. After the session, they left. There were not any employees. Mr. Shenker stated that they would like to extend the permit indefinitely. Mrs. Day stated that she had only given the permit for a one year period the last time. Chairman Smith stated that the Board could only grant it for a maximum of three years. Mrs. Day inquired if the space for a small car had been provided and was assured it had.

Mrs. Evelyn Kuhn of 7206 Beechwood Road stated that her house was so situated that her living room looked into the side of Mrs. Shenker's house. In the year that she had been operating, there had been no interruptions traffic wise. Mrs. Kuhn stated that she had more activity at her house with women's clubs and other activities. Mrs. Shenker had so spaced her appointments, that only one car was in the driveway at a time. There was not any traffic problem or any noise.

The next speaker in support was Ruth B. Reel of 7202 Beechwood Road who stated that she had nothing new to add. She stated that if she did not know about the operation, she would not have known anything was going on there. There was not any additional traffic. Mrs. Reel stated that her kitchen viewed the Shenker residence.

Mrs. Anna G. Uiberall of 7204 Beechwood Road also spoke in support. She stated that there was not any evidence that any business was going on. There was not anything to show that clients visited the property at all.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-L-082 by SHIRLEY L. SHENKER under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-80-V-102 for home professional office (psychologist) to permit continuation of the use beyond its present term which expires January 6, 1982, located at 7210 Beechwood Road, tax map reference 93-3((4))219, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on January 12, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 18,704 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's

RESOLUTION

approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This special permit shall be subject to all other provisions of S-80-V-102 not altered by this resolution.
8. This permit is granted for a period of three years with the Zoning Administrator empowered to grant two additional one-year extensions upon written request from the applicant at least thirty (30) days prior to the expiration date.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 295, January 12, 1982, Scheduled case of

11:30 A.M. THE CHRISTOPHER COMPANIES - FREDERICK KOBER, PRESIDENT, appl. under Sect. 3-803 of the Ord. for community tennis courts, located 7601 Pohick Rd., R-8, Lee Dist., 108-1((1))42, 33.1 acres, S-81-L-082. (Deferred from December 15, 1981 for Notices).

Mr. David Wahl, Vice-President of the Christopher Companies on Old Courthouse Road in Vienna informed the Board that they were developing a 36 acre parcel in the Lee District for townhouse lots with a community area to be deeded to the homeowners. It would be built during the first portion of the development. In response to questions from the Board, Mr. Wahl stated that 225 homes would be served by the facilities. Only two tennis courts were being constructed. Mr. Wahl stated that eight parking spaces were provided. The tennis courts would not be lighted at the present time. The hours of operation would be set by the homeowners' association. Chairman Smith stated that it would only be daylight hours. Mrs. Day inquired if there were other activities on the property. Mr. Wahl responded that there was a tot lot to be included on the site for the younger people.

There was no one else to speak in support and no one to speak in opposition.

Page 295, January 12, 1982 Board of Zoning Appeals
THE CHRISTOPHER COMPANIES - FREDERICK KOBER, PRESIDENT

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-L-082 by THE CHRISTOPHER COMPANIES - FREDERICK KOBER, PRESIDENT, under Section 3-803 of the Fairfax County Zoning Ordinance to permit community tennis courts located at 7601 Pohick Road, tax map reference 108-1((1))42, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on January 12, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-8.
3. That the area of the lot is 33.1 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

296

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The membership shall be restricted to the residents of the 225 dwellings.
8. The hours of operation shall be daylight hours only.
9. Adequate parking shall be provided.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 296, January 12, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for January 8, 1980; January 15, 1980; January 22, 1980; January 29, 1980 and February 5, 1980. It was the consensus of the Board to approve the minutes as written.

//

Page 296, January 12, 1982, After Agenda Items

The Clerk reminded the Board members to file their Real Estate Holdings with the County Attorney's Office by the deadline date. Mr. DiGiulian and Mr. Hyland stated that they had filed their report with the Circuit Court.

//

Page 296, January 12, 1982, After Agenda Items

Lawrence Rosen: The Board was in receipt of a note from Mr. Lawrence Rosen regarding his pending appeal for January 26, 1982. He was coming back from Europe just for the purposes of his appeal and would have jet lag. Mr. Rosen had stated that he would hate to do all of that if his appeal was deferred because of an overloaded agenda. Chairman Smith stated that the Board would proceed with the case as scheduled. He stated that it was uncertain about Mr. Yaremchuk's presence at the meeting though.

//

Page 296, January 12, 1982, After Agenda Item

Reconsideration of Albert Raithel and Batal Builders: The Board was in receipt of a memorandum from the County Attorney dated December 17, 1983 regarding reconsideration or rehearing of the above-captioned variance applications. Chairman Smith inquired as to the Board's consensus based on the information in the memorandum. Mrs. Day stated that she felt the Board should wait for the twelve months to elapse. Chairman Smith stated that he wanted to discuss the matter with the County Attorney at the Board's next meeting. Mr. Hyland stated that the memo did not answer the question as to the authority of the Board itself to move to reconsider a decision it has made. Mr. Hyland stated that another questions that came to mind was if the BZA made a decision in a variance and then received information about the decision that was rendered, new information that had not been received at the time of the hearing, would the Board be prohibited from reconsidering its decision. Chairman Smith stated that if the decision was done at the next meeting, he felt it would be correct. He stated that the Board could not have a hearting at the next meeting but could set a date for it.

// There being no further business, the Board adjourned at 2:45 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith
Daniel Smith, Chairman

Approved July 12, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 19, 1982. The Following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Gerald Hyland and Ann Day. (Mr. John Yaremchuk was absent).

The Chairman opened the meeting at 10:15 A.M. and Mrs. Day led the prayer.

ELECTIONS OF OFFICERS: Mr. Hyland nominated Daniel Smith to serve as Chairman of the Board of Zoning Appeals. Mrs. Day seconded the motion and it passed by unanimous vote (Mr. Yaremchuk being absent).

Mr. Hyland nominated John DiGiulian to serve as Vice-Chairman of the Board of Zoning Appeals. Mrs. Day seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Mr. Hyland nominated Sandra L. Hicks to serve as Clerk to the Board of Zoning Appeals. Mrs. Day seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

//

MATTERS PRESENTED BY BOARD MEMBERS: Chairman Smith announced that he was no longer receiving the Weekly Agenda and asked the Clerk to find out why.

//

MATTERS PRESENTED BY BOARD MEMBERS: The Clerk informed the Board that the term of office for Mr. John DiGiulian would expire on February 13, 1982. The Clerk was directed by the Board to write a letter to the Circuit Court regarding Mr. DiGiulian's term of office and recommending that he be reappointed for another five year term.

//

MATTERS PRESENTED BY BOARD MEMBERS: The Clerk was directed to contact St. John's Episcopal Church regarding their need for a variance.

//

The Chairman called the scheduled 10 o'clock case:

10:00 A.M. THOMAS F. JARAS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard and 19 ft. min. rear yard req. by Sect. 3-107 & 2-412), located 1091A Pensive Ln., 12-4((7))39A, Dranesville Dist., R-1(C), 22,740 sq. ft., V-81-D-200 (DEFERRED FROM 11/24/81 FOR NOTICES).

Mr. Jaras of 1091A Pensive Lane informed the Board that he was seeking a variance for a deck based on three points. He stated that his house was situated in the extreme southeast corner of the lot. The area was shaped like a funnel at the back of the house and was below grade. He stated that the second of the two entrances of his house was also at the southeast corner. Mr. Jaras stated that he was asking for the deck addition to better utilize the entrance to his house. He stated that he had obtained a land architect to help solve the problem with the deck that would be accessible to enter the house and to avoid the funneling problem of drainage. He stated that the solution was the proposal brought to the BZA. Mr. Jaras stated that he felt the back of house and the second entrance were a hardship to him since he could not use his land at the back or the entrance adequately.

Mr. Hyland questioned what it was about that entrance that made it difficult to utilize it. Mr. Jaras stated that there was small deck there now and it set down. All the drainage flowed around the house and the back of the house. There was a small ditch be the deck. Everytime it snowed and rained, it flowed through there so the deck was unusable. Mr. Jaras stated that he wanted a drier area which was his main concern. Mr. Jaras stated that he did not see any other solution. Mr. Hyland inquired as to where the steps were located on the proposed deck. Mr. Jaras stated that there was rendering in the file. He stated that the photographs showed the problem with the grade. Mr. Jaras stated that he wanted to be able to do something about the grade. Mr. Hyland stated that he was unclear about the steps on the new deck. He stated that he had seen the pictures of the old deck and asked if those steps would remain. Mr. Hyland stated that the existing steps were up against the house at the present time. He asked how that would solve the problem with the drainage ditch and having to walk through water. He asked how the new deck would solve that problem. Mr. Jaras responded that in conjunction with the new deck, there would be a patio which would be raised. Mr. Hyland inquired if Mr. Jaras would be walking under the proposed deck to reach the stairs. Mr. Jaras stated that he guessed that was possible but added that he would not be approaching the deck from the south but from the north.

298

Mrs. Day inquired as to what was located at the southeast corner behind Mr. Jaras on Parcel D. Mr. Jaras replied that it was school property that was not built on yet. Mrs. Day inquired if there was a dwelling. Mr. Jaras responded that the nearest dwelling was immediately in front of house. There was a hill in the back over 60 yards away up a hill. Mrs. Day inquired if the deck would obstruct the view of a dwelling that would be close to the line. Mr. Jaras stated that there was not a house close by.

Mr. DiGiulian asked Mr. Jaras to explain about his deck and the problems with the back yard. Mr. Jaras stated that his back was a funnel that he could not utilize. The main back entrance to the house was there. Mr. Jaras stated that his idea was to develop a concept to solve the funnel and make the access better and make the property look better. The land architect had come up with a design that would broaden the deck over the funnel area and wrap it around on a patio which would come out to the north sdie of the house and would be elevated and would limit the water drainage to an area of rocks. Mr. Jaras stated that there was a County owned hill behind him. Mr. Jaras stated that the total concept involved several factors. In response to questions from the Board, Mr. Jaras stated that he had owned the property for two years and three months and was the original owner. Chairman Smith inquired if Mr. Jaras had constructed the house. Mr. Jaras replied that the house was built by a tract builder in the area who had gonv bankrupt. Chairman Smith inquired if Mr. Jaras had purchased the house before it was built. Mr. Jaras stated that he had not. The house was completed before he had purchased it. He informed the Chairman that he had nothing to do with the siting of the house. Chairman Smith stated that Mr. Jaras had seen the completed house and the landscaping before he had purchased it. Mr. Jaras stated that the house had water there. He had the builder make the angle better from the house and put in a special sewer. All the water formed and came around three corners of the house. Mr. Jaras had the builder put in a sewer which only cut down the problem but did not eliminate it. Mr. Hyland inquired as to the object in the middle of the property and was informed it was the well. Mr. Jaras stated that his yard was a mess and that he was trying to landscape it.

There was no one else to speak in support of the application. Mrs. Dorothy Crabtree of 1071 Dougal Court spoke in opposition. She owned the house up on the hill. Mrs. Crabtree stated that she had listened to Mr. Jaras' situation and wanted to give the Board some information and then express her position. The location of the house was as stated and was in the corner of the lot. She stated that the excavation was very unusual as they had to dig into an existing bank when the house was under construction. Mrs. Crabtree stated that she had called the County when the house was under construction because she knew about the runoff from her hill. Her concern was expressed then. Mrs. Crabtree stated that her property was zoned R-1 and the Jaras property was cluster. Mrs. Crabtree stated that she felt Mr. Jaras' house was too close to her property line. The foundation was 20 ft. and the existing deck was about 19 ft. which just met the Code. The yard was irregularly shaped. The entrance was the way it was because of the topography. Mr. Jaras' was proposing to utilize the entire back yard. Mrs. Crabtree stated that she felt Mr. Jaras should have looked this over prior to purchase as she felt this was an ugly situation being located too close to her property. Mrs. Crabtree stated that she was up on an elevated hill overlooking Mr. Jaras' roof. She stated that she had her yard clear and had placed cedars to conceal Mr. Jaras' house under the hill. She stated that during the previous spring she had her house up for sale. One of the problems was that people frowned upon Mr. Jaras' house being so close. With regard to the School Board property, Mrs. Crabtree stated that she had a verbal agreement with Mr. Moore that she would maintain the ground for the County to have a light back there as there were snakes. Mrs. Crabtree stated that she wished Mr. Jaras had considered all of these things before purchasing the property. His septic field was in a strange place. Mrs. Crabtree stated that if the deck was passed, it would not leave enough space between his property and hers.

Mr. Hyland inquired as to the height of the cedars planned by Mrs. Crabtree. She stated that they were 5 ft. cedars planted 5 five years ago. Mrs. Crabtree stated that her house was 50 ft. from the deck now. Mr. Hyland stated that he was uncertain where Mrs. Crabtree's property was. She stated that her perty line abutted Mr. Jaras and the County School Board property. Mrs. Crabtree stated that she also had an irregularly shaped lot and owned lot 39 of Old Mill Estates. Mrs. Crabtree stated that she was opposed to the variance because Mr. Jaras' deck was already too close to her line. If she wanted to put in a tennis court, Mr. Jaras would be unhappy. She stated that if she tried to build anything there, she would be taking down his privacy which was the cedars and putting in lighting. Mr. Hyland inquired if Mrs. Crabtree was proposing to do that at the present time and was informed she was not. She stated that if she sold her property, the next owners might want a tennis court. She was not sure that Mr. Jaras was aware of that.

Mrs. Crabtree informed the Board that she had been notified when construction began on Mr. Jaras' deck. Chairman Smith inquired if construction had already begun on the proposed deck. Mrs. Crabtree stated that she was not down there. During the spring, the existing deck was removed and the new deck was started but then stopped. Then she had received the notification letter about the public hearing. Mr. Hyland inquired as to what the house looked like with the deck taken down. Mrs. Crabtree stated that it was a mess. The new structure was a wooden structure without any railings around it. Mr. Hyland inquired if the new deck was the same size as the previous one. Mrs. Crabtree replied that it was a little bit larger. Mrs. Crabtree stated that something had been started but she was not certain it was the new deck.

299

Mr. Hyland stated that it could or could not relate to the new deck. He inquired as to Mrs. Crabtree's present plans as to whether she was going to stay on her property. Mrs. Crabtree responded that she was a member of the Great Falls Citizens Association and loved the area very much. She stated that there was a financial situation in her home and she was going to say. Mrs. Day stated that then it was moot question about the construction of the tennis courts. She asked if Mrs. Crabtree was aware that the tennis court lights would shine into Mr. Jaras' home and Mrs. Crabtree stated that she was aware of it.

Chairman Smith inquired of the applicant if the deck was the same as the one requested on the plat. Mr. Jaras stated it was. Chairman Smith inquired if any part of the deck had been removed. Mr. Jaras stated that it had. He stated that he had a stained painted, poorly constructed deck top. Whether the variance went through or not, Mr. Jaras was putting in a better deck. He stated that he had not put the rails up yet as he was awaiting the outcome of the variance. He admitted that the deck in its present form looked ugly. Mr. Jaras stated that his hearing had been deferred because of a technicality. If the variance were approved, Mr. Jaras would continue to use the same wood to build the additional deck. Chairman Smith inquired as to how much additional deck had been constructed other than shown on the house plan. Mr. Jaras stated that the 2 ft. to the side of the existing deck had been added. He stated that he had expanded the deck 2 ft. to the north.

During rebuttal, Mr. Jaras stated that he had said Mrs. Crabtree's house was 50 yards away and she said it was 50 ft. away. Mr. Jaras stated that his house was 50 ft. wide on the side and Mrs. Crabtree was at least two house lengths away. Mr. Jaras stated that one point everyone agreed upon was that his back yard was a mess. He stated that he had every intention of putting in the money and labor to correct it. Regardless of whether he purchased the house, someone had sited the house poorly. Mr. Jaras stated that it was his intent to put the money in making his property look good. He had already spent money on landscaping. Mr. Jaras informed the Board this intentions were good. Mr. Jaras stated that the concept he had was more pleasing than the way the property existed. He stated that he could continue the property the way it was but he was sure the property values would suffer. Mr. Jaras stated that he intended to fix up the property one way or another.

Mr. DiGiulian informed the Board that he was having a problem understanding the relationship between the two houses and the extent of the drainage. He asked the Board to defer the decision until he had an opportunity to look at the properties. Mr. Hyland seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being absent). The variance was deferred until January 26, 1982 at 9:00 P.M. for decision.

//

Page 299, January 19, 1982, Scheduled case of

10:10 A.M. HERBERT H. WRIGHT, appl. under Sect. 18-401 of the Ord. to allow construction of carport addition to dwelling to 3.9 ft. from side lot line (7 ft. min. side yard req. by Sect. 3-307 & 2-410), located 7212 Masonville Dr., 60-1((29))224, Mason Dist., R-3, 46,825 sq. ft., V-81-M-202. (DEFERRED FROM NOVEMBER 24, 1981 FOR NOTICES).

Mr. Herbert H. Wright of 7212 Masonville Drive in Annandale informed the Board that he was requesting a variance to build a carport addition to his house. Because the lot was narrow and the placement of the house on the lot was in a very unusual manner, it was necessary to go closer to the side lot line. Mr. Wright stated that he had also had a chimney that protruded into the area making it necessary to have a 13 ft. carport. On the other side of the house was a retaining wall making it impossible to build anything there. Mr. Wright stated that he was seeking the variance for his retarded daughter who had to wait for transportation on rainy days, etc. which made it difficult for her to go down the driveway. When it was snow and ice, it was impossible. Mr. Wright stated that his daughter had to stand out in the snow. He was seeking the variance for his daughter's safety.

In response to questions from the Board, Mr. Wright stated that there was a hill at the rear of his house going down at about a 45° grade. Mr. Wright stated that it would be impossible to build at the back and there would not be any way a vehicle could get to the back of the house. Mr. Wright stated that his house was at the top of the hill. On the right side of the property, it went down considerably.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-M-202 by HERBERT H. WRIGHT under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 3.9 ft. from side lot line (7 ft. minimum side yard required by Sect. 3-307 & 2-410) on property located at 7217 Masonville Drive, tax map reference 60-1((29))224, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

300

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1982 being deferred from November 24, 1981 for Notices; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 46,825 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems which would preclude building to the rear or to the northeast side of the property and there being other factors which necessitate building the carport which are particular to the applicant's family. In addition, there being no opposition to the request and to deny the request would result in a hardshipt to the applicant.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats incluced with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 300, January 19, 1982, Scheduled case of

10:20 A.M. REGLA ARMENGOL - LA DANSE ACADEMY OF BALLET, appl. under Sect. 3-303 of the Ord. to amend S-272-78 for school of special education to permit continuation of the use for a new term, located 4319 Sano St., 72-2((1))20, Mason Dist., R-3, 4.677 acres, S-81-M-076. (DEFERRED FROM DECEMBER 1, 1981 FOR NOTICES).

Mrs. Regla Armegol informed the Board that her ballet school was located at 4319 Sano Street which was a nursery school run by the Poor Sisters of St. Joseph. In response to questions from the Board, Mrs. Armegol stated that she had 12 to 15 students in the evening from 6:30 P.M. to 8 P.M. She operated three nights a week on Monday, Tuesday and Thursday. The Saturday hours were from 10:30 A.M. to 3 P.M. Mrs. Armengol stated that she was applying for sunday use which would be very rare. She stated that she had applied to renew the permit but in the time it took to come before the Board, the permit had expired. Mrs. Day inquired as to the term of the lease. Mrs. Armengol stated that she had a legal lease from three years ago but had made another legal lease. She stated that she did not believe there was a time limit in the file. Mrs. Day inquired if the lease was renewable and what the term was for the new lease. Mrs. Armengol stated that the lease was for at least three years and that there was a letter on file with all of the other papers.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-M-076 by REGLA ARMENGOL - LA DANSE ACADEMY OF BALLET, under Section 3-303 of the Fairfax County Zoning Ordinance to amend S-272-78 for school of special education to permit continuation of the use for a new term, located at 4319 Sano street, tax map reference 72-2((1))20, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

301

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on January 19, 1982; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-3.
3. That the area of the lot is 4.677 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance;

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 15.
8. The hours of operation shall be Monday - Friday, 6:30 P.M. - 9:00 P.M.; and Saturday 10:30 A.M. - 4:00 P.M. with occasional hours on Sunday, 10:30 A.M. - 4:00 P.M.
9. The number of parking spaces on the premises shall adequately accommodate 5 to 7 cars daily.
10. This special permit is granted for a period of three years.
11. All other provisions of S-272-78 not altered by this resolution shall remain in effect.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 301, January 19, 1982, Scheduled case of

10:30 A.M. RICHARD PAUL GUERRIERI, appl. under Sect. 3-303 of the Ord. for a home professional office (nutritionist), located 3300 Nevius St., R-3, Mason Dist., 61-2((7))12, 17,356 sq. ft., S-81-M-083. (DEFERRED FROM DECEMBER 15, 1981 TO ALLOW ADDITIONAL TESTIMONY AND FOR DECISION OF FULL BOARD).

Mr. Hyland stated that at the last meeting, he had moved to defer this matter and had very strong feelings that a full Board should hear the case. Mr. Hyland stated that Mr. Yaremchuk was still not present and that his feelings had not changed. He stated that he would like to have the benefit of Mr. Yaremchuk's knowledge in this area. Mr. Hyland stated that he would like to know the applicant's position in this matter. Mr. DiGiulian stated that he was not present at the hearing on the 15th of December and had not reviewed the file. Mr. Robert McGinnis, an attorney representing Mr. Guerrieri, stated that they wanted a deferral until Mr. Yaremchuk was back. Mr. Hyland suggested that the matter be deferred for a period of two to three weeks.

Mr. Hyland stated that there was one other matter about an alleged complaint. He stated that he was a bit perplexed that there was an art class in the neighborhood yet the person who complained would not indicate where it was being conducted. Mr. Hyland stated that unless the neighbors came forward, he was going to disregard the allegation made by Mrs. Dawson. Mr Hyland stated that he would like to know where it was but needed the cooperation of the neighbors.

It was the consensus of the Board to defer the variance until February 9, 1982 at 11:45 A.M. for decision of a full Board.

//

Page 302, January 19, 1982, Scheduled case of

10:50 A.M. GEORGE ZAGAS, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 12.4 ft. from a street line on a corner lot, with the existing house located 14.3 ft. from a side lot line (35 ft. min. front yard and 15 ft. min. side yard req. by Sect. 3-207), located 3715 Spicewood Dr., R-2, Providence Dist., 59-3((2))16A, 21,801 sq. ft., V-81-P-224.

Mr. George Zagas of 3715 Spicewood Drive informed the Board that when he applied for a permit to build a garage, he was informed he was too close to the side line and would need a variance. Mr. Zagas stated that he had a lot that was completely narrow and very steep. There was no place to construct a garage. In response to questions from the Board, Mr. Zagas stated that the house was 35 years old but that he had built a brand new house having 4,700 sq. ft. He stated that he only left the front wall so it was practically a new house. Chairman Smith stated that it was a good size house now. Chairman Smith inquired if Spicewood Court was developed and was informed it was like a creek. Mr. Zagas stated that there was only one house at the back of his property and the road did not go completely back. Chairman Smith inquired if the lots were vacant. Mr. Zagas stated that from looking at the tax map, lots 9 through 15 were in the floodplain and a portion of lots 7 and 8 and 17A and 18 were also. Chairman Smith stated that there would not be any place to build a house. Mr. Zagas stated that his house was not 35 ft. from the road. He stated that he was given a permit for the house and then came back for a permit for the garage.

Mr. Hyland inquired as to why Mr. Zagas had not asked about the garage when he got the permit for the house. Mr. Zagas stated that he was not aware of the 35 ft. requirement from the road. It was not really a road, but a creek. Mr. Zagas stated that it had been like that for 50 years. Chairman Smith inquired as to why Mr. Zagas needed a 24 ft. garage and whether it was a front or side entrance. Mr. Zagas stated that it would look finished and nice in the area. Chairman Smith stated that it was not justified under the Ordinance. Mr. Zagas stated that his house did not bother anything and was an improvement to the neighborhood. Mrs. Day stated that the applicant expected to be 14.3 ft. from the side line. She inquired as to why he could not build the garage 23 ft. to it would help the side lot situation. Mr. Covington stated that if Spicewood Court was not there, the applicant would still need a variance.

Chairman Smith inquired as to how the house got so close to the other side. Mr. Zagas explained that the house was already there. He had not touched that side at all. Mr. Zagas stated that he had not extended it from the side. The house had been there in the beginning. The house was aluminum siding which he had removed and replaced with brick. Chairman Smith inquired as to why a 24 ft. wide garage was necessary. Mr. Zagas stated that to build in the back was impossible and would destroy the whole back yard. He stated that the neighbors agreed that it was very ugly.

Mrs. Carol Hacker of 8419 Spicewood Court informed the Board that she was the only person on Spicewood Court and it was a gravel road. Mrs. Hacker stated that she did not object to Mr. Zagas' proposed garage at all. Mrs. Hacker stated that her house faced his back yard. The property had been a junk yard and there was no way to move it out. Mr. Zagas had covered all of the junk. She stated that there was no way to dig down. Mrs. Hacker stated that even if the garage was only a few feet from the gravel road, it would not bother her at all and would help the appearance of the property.

There was no one else to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-P-224 by GEORGE ZAGAS under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 12.4 ft. from a street line on a corner lot, with the existing house located 14.3 ft. from a side lot line (35 ft. minimum front yard and 15 ft. minimum side yard req. by Sect. 3-207), on property located at 3715 Spicewood Drive, tax map reference 59-3((2))16A, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

303

RESOLUTION

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 19, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 21,801 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems which precludes the placing of the garage to the rear of the property which necessitates the placement of the garage on that side of the property which abutts Spicewood Court. And it appearing to the Board that the lots along Spicewood Court are in the floodplain which would suggest that future development would not take place. In addition, there is not opposition to the request and, in fact, there is not support from the only immediate neighbor affected by the request.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 303, January 19, 1982, Scheduled case of

11:00 A.M. DAVID & ANN DREWRY, appl. under Sect. 18-406 of the Ord. to allow deck to remain 16.0 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-207 & 2-412), located 2625 Oakton Glen Dr., R-2, Centreville Dist., 37-4((16))64, 12,517 sq. ft., V-81-C-226.

Mr. Chip Paciulli of 307 Maple Avenue in Vienna informed the Board that the house had been built in the winter of 1979 and the first owner had purchased the home in the spring of 1980. During his ownership, he had obtained a freelance person to build the deck onto the house. That homeowner was transferred out of the area and the original builder of the house repurchased the house. They then sold the house to Mr. and Mrs. Drewry. They did not know about the deck violation. It came to light when Mr. Paciulli prepared a plat for the house location for the lending institution. Mr. Paciulli was asked to file a variance on behalf of Mr. and Mrs. Drewry. Mr. Paciulli informed the Board that the deck location was not detrimental to the other homes in the immediate vicinity. There was a letter of support from the closest neighbor which was in the file. Mr. Paciulli stated that the deck did not create an unsafe situation. Mr. Paciulli stated that to force compliance would cause a hardship in that Mr. Drewry would have to remove the deck and would not have practical use of the yard. The back yard was very steep and went down to about 8 to 10 ft. The deck was the minimum size for the area. Most of the houses in the area had lots that would support the decks.

Chairman Smith inquired as to why this was not picked up at the time of repuchase. Mr. Paciulli stated that the builder did not have to refinance. Chairman Smith inquired as to the builder and was informed it was Centex. Chairman Smith inquired as the length of time the original owner had occupied the home and was informed it was about a year. In response to further questions from the Board, Mr. Paciulli stated that his firm had prepared the original house survey. Mrs. Day inquired about the two sliding glass doors that exited onto the deck. She inquired if that was a dining room but was informed by Mr. Paciulli it was a family room. Mrs. Day stated that without the deck, the occupants would break their legs.

Mr. Drewry spoke in support of the application. He stated that he was the current owner and occupant. He requested that the Board grant the variance as he had bought the home in good faith. It was only two days before closing that he had found out about the problem. He stated that he had a difficult time in finding a house. Mr. Drewry stated that he had two small children and did not want to have to cut the deck down as it would be a safety hazard to his

small children. Mr. Drewry informed the Board that he had occupied the house since the 18th of September. He stated that he became aware of the problem on the 15th of September. Chairman Smith stated that the lending institution had brought out the discrepancy. Mr. Drewry stated that he had been notified by his realtor. Mr. Drewry stated that he had agreed to move into the house and pursue the variance.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. V-81-C-226 by DAVID & ANN DREWRY under Section 18-406 of the Zoning Ordinance to allow deck to remain 16.0 ft. from rear lot line (19 ft. minimum rear yard required by Sects. 3-207 & 2-412) on property located at 2625 Oakton Glen Drive, tax map reference 37-4((16))64, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper proper notice to the public, a public hearing was held by the Board on January 19, 1982; and

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

1. That non-compliance was the result of an error in the location of the deck and there is no record of an application being made for a building permit.

2. That non-compliance was no fault of the applicant.

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

1. That the granting of this variance sill 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 variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

3. That to remove the deck would cause a dangerous condition of exit from the family room area.

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

This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 304, January 19, 1982, Scheduled case of

11:10 A.M. JEAN-MICHEL FARRET, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 3.9 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 7932 Lewinsville Rd., R-1, Dranesville Dist., 29-2((2))17, 26,679 sq. ft., V-81-D-227.

Mr. Michael Stern of 3244 Prospect St., N. W., in Washington represented the applicant. He stated that the proposed garage would be within the 20 ft. side yard. Mr. Stern stated that this appeared to be the most likely place to build the garage on the lot as the existing site was developed behind the residence with a swimming pool. On the opposite side, there was a minimum 20 ft. setback. The only option was to place the garage in the front which would be unsightly and would encroach on the front lot line.

Chairman Smith inquired as to the hardship of the application. Mr. Stern stated that Mr. Farret wanted to build a garage and not have to park in the driveway. Chairman Smith asked if there was a variance for the tennis court fence at the back of the property. Mr. Stern stated that he was not aware of any variance. Mr. Stern stated that Mr. and Mrs. Farret had owned the property for ten years. Mr. Stern stated that he did not know how old the tennis court was but believed it was five years old. Chairman Smith inquired about the pool but Mr. Stern was not certain how long it had been there either. Chairman Smith stated that the house was rather large and had been expanded. Mr. Stern stated that there was a 24 ft.

projection on the left side with a deck that had been added. Mr. Stern advised the Board that he was not too familiar with the history of the house. Chairman Smith stated that the proposed garage had put the entire structure over 17 ft. into the side yard. Mr. Stern stated that they had spoken to the neighbors on the right about the garage and they had no objections to it being located there as long as Mr. Farret would replace any vegetation that was damaged during the construction of the garage.

Mr. Stern stated that in addition to the agreement regarding vegetation, there was a 30" Poplar Tree which was left of the property line and behind the garage. Mr. Stern stated that they had a tree expert come by to see if construction would damage the tree. The expert had indicated that it would not harm the tree as the proposed garge did not cover any more of the feeding area of the roots than the present driveway on that side. Mr. Hyland inquired if there was any other screening between the two houses. Mr. Stern replied that there was a small hedge. Mr. Hyland stated that the pictures showed a large hedge to the rear of the property and a small hedge on the side.

There was no one else to speak in support and no one to speak in opposition.

Page 305, January 19, 1982 Board of Zoning Appeals
JEAN-MICHEL FARRET

R E S O L U T I O N

In Application No. V-81-D-227 by JEAN-MICHEL FARRET under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 3.9 ft. from side lot line (20 ft. minimum side yard required by Sect. 3-107), on property located at 7932 Lewinsville Road, tax map reference 29-2((2))17, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 26,679 sq. ft.
4. That the applicant's property is substandard as to lot width and lot area and with the present improvements on the property, there is no other place to construct the garage.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 305, January 19, 1982, Scheduled case of

11:20 A.M. STEPHEN N. KOTZIN, appl. under Sect. 18-401 of the Ord. to allow relocation of existing private fenced tennis court back from street to 10 ft. from front lot line (40 ft. min. front yard for accessory structure or use req. by Sects. 3-107 & 10-105), located 2990 Fox Mill Rd., R-1, Centreville Dist., 36-1((4))3, 40,411 sq. ft., V-81-C-228.

306

The Board was in receipt of a letter from the applicant seeking withdrawal of the application. Mr. Hyland moved that the variance be dismissed without prejudice. Mr. DiGiulian seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith).

//

Page 306, January 19, 1982, Scheduled case of

11:30 A.M. CABELL W. LLOYD, appl. under Sect. 18-401 of the Ord. to allow construction of two-car garage addition to dwelling to 4.3 ft. from side lot line such that total side yards would be 29.2 ft. (12 ft. min. but 40 ft. total min. side yard req. by Sect. 3-107), located 12172 Holly Knoll Circle, R-1(C), Dranesville Dist., 6-1((7))58, 20,154 sq. ft., V-81-D-229.

Mr. Cabell Lloyd of 12172 Holly Knoll Circle informed the Board that the variance was solely for personal need to accommodate two cars, storage and a workshop type of area. Mr. Lloyd stated that he owned a station wagon, several bicycles and needed a garage. Mr. Lloyd told the Board that his was the only home that did not have a garage, only a carport. Chairman Smith stated that the house was constructed with a carport and Mr. Lloyd had purchased it. Mr. Hyland inquired as to the dimensions of the present carport and was informed they were 12.3 x 22 ft. Mrs. Day inquired as to the total width of the proposed garage and was informed it would be 24 ft. to accommodate two cars. Mrs. Day inquired as to the situation on lot 59. Mr. Lloyd stated that there was approximately 29 to 30 ft. between lot lines. He stated that his neighbor did not object to the garage. Mrs. Day inquired about the rear of Mr. Lloyd's property and whether there were topographic problems. Mr. Lloyd stated that there were topographic problems. It started at the house and dropped off 8 to 10 ft. to a 15 ft. distance. Mr. Lloyd stated that he wanted to terrace that in a three level tier.

In response to further questions from the Board, Mr. Lloyd stated that he had owned his property since July of 1977. Mrs. Day inquired if there was a basement in Mr. Lloyd's home. He stated that there was a basement but it had been converted into living quarters and a recreation room.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-D-229 by CABELL W. LLOYD under Section 18-401 of the Zoning Ordinance to allow construction of two-car garage addition to dwelling to 4.3 ft. from side lot line such that total side yards would be 29.2 ft. (12 ft. minimum but 40 ft. total minimum side yard required by Sect. 3-107) on property located at 12172 Holly Knoll Circle, tax map reference 6-1((7))58, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 20,154 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including narrow and has exceptional topographic problems.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

RESOLUTION

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. Yaremchuk being absent).

Page 307, January 19, 1982, Scheduled case of

11:45 A.M. MANTUA HILLS SWIMMING ASSOCIATION, appl. under Sect. 3-303 of the Ord. to amend S-39-69 for community swimming and tennis facilities to permit addition of two tennis courts and a second floor to an existing bath house, located 9330 Pentland Pl., R-3, ProvidenceDist., 58-2((1))3, 4.684 acres, S-81-P-089.

Mr. Royce Spence of 609 Park Avenue in Falls Church represented the applicant. He informed the Board that the association had been operating since 1963. In 1969, a permit was allowed for an additional pool and two tennis courts. In 1977, a permit was obtained for the lights for the tennis courts. The present application was to add two additional tennis courts without lights and a second floor to the existing bathhouse. Mr. Spence stated that the association had 560 members with 200 people at the facility at any one time during the summer.

With respect to the use of the additional facilities requested, there would not be any lights on the tennis courts. The courts would be operated during daylight hours only. The facility at the present time was a small community club with at least 2 or 3 outdoor pools. They held three social functions during the summer and a few during the winter. Mr. Spence stated that the facility would be open to any community group during the year. There were 109 parking spaces provided with 105 being required. Mr. Spence stated that the facility had been trouble-free since 1963. The club had invited all of the adjoining property owners to a meeting to discuss any problems. The only person who had attended was Mrs. Tidwell and she was not opposed to the application. They lived at the immediate entrance to the pool on the lefthand side and would be closer to the tennis courts that would be added. Mr. Spence stated that if there were any trouble areas, it would be Saturday activities such as swim meets which were conducted at the facility for three months of the year. Mr. Spence stated that there had not been any problem with parking at dual meets. There was sufficient parking to accommodate any additional competion with six teams which occurred once a year. He stressed that the competitions were not always held at this facility but if it was an area of concern, arrangements could be made to carpool. Mr. Spence stated that the association was willing to work on other problems.

Mr. Hyland inquired as to the number of persons presently holding memberships in the association and was informed there were 500 with an additional 60 planned for the future. Mr. Hyland inquired if this application asked to include the additional 60 members. Mr. Spence stated it was not related to the total number of people but to the square footage of the pool. Mr. Hyland stated that the reason for his question was that in previous application similar to this one, it seems that the Board had information about the number of memberships in the association in order to have some idea of the extent of the activities. Mr. Spence had stated that of the 500 members, there were 200 people per day. Mr. Hyland inquired as to Mr. Spence's reaction that the association could increase its membership at will without the Board having any control over it. Mr. Hyland stated that the club could sell 1,000 memberships. Mr. Spence replied that the Board of Directors would not be adverse to a restriction of future members of 560 members. Mr. Hyland stated that the association had an open-ended permit that did not put any control to the level of activities.

Mrs. Day inquired if the additional 60 members were within Mantua Hills or outside. Mr. Raymond P. De Member, President of the of the association, residing at 9010 Glenbrook Road informed the Board that this was a community pool limited to residents of Mantua. Many people walked to the facility or rode bycycles. Mrs. Day inquired as to the number of residents eligible to be members. Mr. De Member stated that he believed the number was about 1200 families. Mrs. Day inquired if it was mandatory dues requirement but was assured it was not. Mr. De Member stated that the association had a long waiting list of 120 people. They could only attain a membership when someone sold their property.

Mr. Hyland stated that the use of the community center and the meeting room suggested that the association would use it as the need arose. He inquired as to what the club was asking for in terms of the community center. What did they want authorization to do. Mr. Spence stated that the association held three social functions a year on Saturdays. There were 80 to 100 people at parties outdoors. The club had two tennis courts operating until 10 at night. The two new courts would not be lighted. Mr. Hyland discussed the Board's policy of only allowing six after hour parties and inquired if they would be sufficient for the club's activities. Mr. Spence stated that they would be sufficient during the season. What it did not cover was the off-season activities. Mr. Spence stated that the association wanted to make itself available to the women's clubs, boy scouts, girl scouts, etc. He did not want to be too limited in that. He stated that if the club was allowed six more parties off-season,

it would be sufficient. Mr. Hyland asked Chairman Smith for guidance in that the BZA policy for after hour parties had been intended to cover the extra activities during the season for up to six parties. The association had stated that it held two or three during the summer and wanted six off-season parties which would be a total of up to 12 all year. Mr. Hyland inquired if the BZA had ever in the past permitted a community facility to extend its facility to the off-season. Mr. Hyland inquired if the parties were free or whether there was a charge. Mr. Spence stated that the association was not in the business of making money. Chairman Smith stated that the Board restricted such parties to community uses and the only charge would be a donation to cover the janitorial expenses. He stated that if the association was going to charge for the use of the premises, it could only cover the janitorial services.

Mr. Hyland inquired if there were non-recreational uses permitted to use the facility, what limitations were imposed on them. Mr. De Member stated that the club would assure that the restrictions that applied to them would apply to anyone using the facility. He stated that the restrictions would not be breached. Chairman Smith stated that he was under the impression the club had been talking about community meetings and not parties. Chairman Smith stated that all parties had to be under the Mantua Hills Association. Chairman Smith inquired as to the size of the meeting room and the maximum number allowed by the Fire Marshal. Mr. De Member stated that 300 persons would be the maximum as far as the fire regulations. Chairman Smith was concerned about the parking situation. He stated that the club was supposed to expand its parking to 145. Mr. Spence stated that he was certain that was not done but he indicated that the club had met the requirements of the Ordinance with regard to parking. Chairman Smith stated that was with regard to the pool. This was a dual use situation. Chairman Smith stated that he was certain the Ordinance addressed dual uses.

Mr. Hyland stated that the number of memberships was being increased to 560. He asked if the BZA was convinced that there was sufficient parking spaces if the number was increased to 560 families. Mr. Spence stated that the club had provided some bicycle parking.

There was no one else to speak in support. Mr. Williams spoke in opposition. He stated that those of the neighbors who had felt that this was not a good package were led astray at the pre-meeting among club members. Mr. Williams stated that he was a pool member but was opposed to the way people were maneuvered and how questions were answered with less than candor. The neighbors had decided to boycott the meeting. Mr. Williams stated that the opposition to the proposal was due to the trespass on private property on occasion and the misinformation about the application. Mr. Williams stated that the use of the second floor was inconsistent with the club's intentions to rent the facility for wedding receptions, etc. He stated that the club planned to rent to anyone whether they were a club member or not. Chairman Smith advised Mr. Williams that it was prohibited under the Ordinance except for anything allowed by the association. He stated that the club could not lease or rent the facility.

Mr. Williams brought to the Board's attention that the club caused a nuisance as they created a good deal of noise, trash and undesirable traffic after hours. In all of these instances, while the club tried to do their best to control the situation, there was a limit as to what they were able to accomplish. Mr. William stated that the pool was there when he purchased his house 12 years ago. In response to questions from the Board, Mr. Williams stated that he opposed the complete application but was willing to compromise. Mr. Williams stated that the current special permit was for a three month a year operation and the club was now proposing to use its facility twelve months a year which was quite a nuisance.

Mr. Williams informed the Board that there were really two proposals before it. One was tennis courts and the other was the second floor addition of the deck. Mr. Williams stated that he was not a tennis player but would support the tennis courts request as they did not contribute to the problem. Mr. Williams did not support the second floor request. Mr. Hyland stated that was the area that intrigued him was the additional use. The club had suggested that they wanted the six additional after hour parts off-season. The present guidelines were only for six parties during the season. This allowed for a rest off-season. Mr. Hyland stated that concerning the other activities, he did not look at them in the same nature as the club enjoyed and stated that it was limited in scope to community use. The special permit limited the number and duration of the use of the facility.

Mr. Hyland inquired as to the total square footage to be added and was informed it would be 1900 sq. ft. having a 300 person occupancy. Mr. Hyland questioned whether the citizens had a problem with the addition because of what they considered to be the expanded use. Mr. Williams stated that the citizens were willing to live with the nuisance for three months as they swam also. Twelve months was quite a bit different. He understood that during the other nine months, the activities would not be as heavy. Mr. Williams stated that the addition would facilitate some aspects but whether or not it was necessary was another matter Mr. Hyland stated that the Board could limit the activities

The next speaker in opposition was Mr. Robert Nicholson of 9231 Glenbrook Road who stated that he lived behind the pool. He stated that most of the pools in the area like Truro were set down in a hollow. The Mantua Pool set up above the homes. Mr. Nicholson stated that he

309

did not want to see a second story and was quite concerned. He stated that the letter from the club was misleading. The club had been in existence for 20 years. There were 500 memberships. Mr. Nicholson stated that he was opposed to a community center for personal use. He was concerned about how the proposal was thought out and planned. Mr. Nicholson emphasized that his main concern was the second story which would be an eyesore. He stated that he did not have any objections to the tennis courts.

The next speaker in opposition was Mr. Alan D. Plehn of 9311 Glenbrook Road who resided five houses up from the pool. Mr. Plehn stated that the letter from the association was seeking approval regarding (1) expansion; (2) second story addition on the pool; and (3) increase in membership to 560 members. Mr. Plehn stated that it was presented as one package for either a yes or no vote. Mr. Plehn stated that gradually things were being cut away so the members could see the true picture. He stated that the activities could take place in other facilities. Mr. Plehn stated that he did not see how the club had swayed the members to go along with this proposal. The only time the members were asked, they had said no. After a number of years, the club had put the proposals together and presented it as a yes or no package. He stated that non-residents were allowed to vote. Mr. Hyland inquired as to the vote on the package. Mr. Plehn stated that the proposal passed by a margin of five votes. Mr. Hyland stated that he wanted to know what the vote was and how many people voted. Mr. Plehn stated that he had no knowledge of the vote. However, the members were assured that the proposal would pay for itself in rentals. That was one of the reasons why people went along with it as there was an $150 assessment for the construction. Mr. Hyland inquired as to the cost of construction and was informed it was $100,000. Mr. Plehn stated that the two story clubhouse would be much more visible to see. Mr. Plehn stated that he would rather have asphalt there than the high structure. Chairman Smith inquired if the voting was done by secret ballot and was informed it was by written proxy and absentee ballots.

The next speaker in opposition was Mr. James H. Williamson of 9328 Glenbrook Road who was also a member of the club. He stated that he was not opposed to the tennis portion of the proposal but the club members were not allowed to split their vote. The clubhouse portion would be unsightly. Mr. Williamson did not believe that the clubhouse was necessary. Some of the uses would be for teen parties in the summer. He stated that the teens did not pick up the beer cans in the yard and often had sex in people's front yards. There was no guarantee about policing the additional traffic in the area if there were parties. Mr. Hyland stated that assuming the Board approved the clubhouse addition, he asked what use Mr. Williamson would find reasonable, if any. Mr. Williamson stated that he would not oppose club meetings held during the daytime. He opposed the parties in the evening, the additional traffic and the way the teenagers would be allowed to use the facility.

The next speaker in opposition was Mr. Guy Reddick of Glenbrook Road who stated that his house was directly abutting to the club property. Mr. Reddick agreed with the other gentlemen that he was not opposed to tennis courts but to the building of the second deck. Prior to the vote, he had been told specifically that the facility would pay for itself because it would be rented for parties, wedding receptions, etc. He stated that the neighbors did not need twelve months a year of wildness around the facility.

During rebuttal, Mr. Spence stated that a lot of the opposition was regarding the conduct of the meeting. He stated that there was a question of financing which had been clarified. The land itself would be supported through membership fees. Mr. Spence stated that the Board of Directors was sensitive to the problems. They had gone to Truro which was adjacent as they had a similar facility. The Directors had met with them and they were willing to meet with the adjoining property owners. Mr. Spence stated that they had talked to the neighbors of Truro about the off season activities and the lack of problems that went on.

Mr. Hyland stated that Mr. Spence had not given the Board what the restrictions would be. He stated that one thing that intrigued him was the applicant's suggestion that the hours would be as the need arose. Mr. Hyland stated that he would like the applicant to decide the hours rather than the Board. He wanted a response in terms of the rental of the facility. Mr. Spence stated that it was his understanding that there was financial support. This was a community use and would have to have a large segment of the community there. Mr. Hyland stated that this was not a community center but a private recreational facility which had asked to expand its facility. If the club was asking for a community center for the community, it was two different things. Mr. Spence stated that a lot of people using the facility would also have a dual capacity as members of the association. They would, in large part, be members of the club. It may be under the auspices of the scouts, garden clubs, etc. Mr. Spence stated that there were teen parties during the summer and that teenagers were part of the community. Teen parties were not bad. Mr. Hyland inquired if wedding receptions were being permitted at the community center. Mr. Spence replied that Chairman Smith had indicated that was a violation of the Ordinance. Mr. De Member stated that he did not know where the citizens had gotten the information that the center was renting as the financial projections did not include a dollar for rental. There was no intention to make money on the facility.

The Board of Directors had gone over to Truro to see how their club was run. Some members had attended a wedding reception there. There was not any problem as it was inside. Mr. De Member stated that the club had teen parties during the summer and they were very successful. He did not understand where the information was coming from.

Mr. Hyland inquired if there had been any representations that the charges for the use of the facility would carry the cost of the maintaining the facility and Mr. De Member stated there had not been.

Chairman Smith closed the public hearing. He stated that he could not support the second story addition as there was not any valid reason behind the expansion. Mr. Hyland stated that this was his motion to make. He stated that he had no problem making a motion to grant the application as requested on the basis that the club had shown that the addition of the tennis courts and the structure would serve a valid purpose. However, two neighbors had stated that the second story would be an eyesore. The membership had voted to approve the addition with 2/3 vote plus 5. Mr. Hyland stated that he had a severe problem with the proposed use. He could put restrictions or limitations on the use which he felt to be reasonable. However, it would be easier if the club would agree as to what the use of the facility would be. If the BZA did it, someone might be unhappy with what the Board came up with.

Mr. Spence replied that the club had tried to work with the folks and were not unwilling to work with them now. Mr. Hyland stated that there were not any restrictions in the statement. Mr. Spence stated that there were existing rules to regulate the number of in-season parties. He had meant to convey that as an example of the rules during the off-season, six per season for a total of twelve. The majority of the users of the facility would be club members. Mr. Spence stated that there was an additional layer of uses that had to be considered and that was the girl scourts, etc. Mr. Spence stated that they would not want to call ahead to the County for approval on these type uses. Chairman Smith stated that was not the type of uses for this type of facility in the community. This was a recreation club. Mr. Spence stated that the club would accept a total restriction of 150 people. Mr. De Member informed the BZA that of the 346 voting for this proposal, there were 900 members of the immediate community who were not represented in the vote. The only real protection they had was through the BZA. Anything the club did or any rules that they passed would not be universally applied to the community. Another point was that the association had a current Board of Direcotrs but they held elections eacy year. There was no assurance that any restriction passed by the Directors would hold any weight.

Mr. Hyland stated that the community, both members and non-members needed to get together and come up with restrictions on the off-season uses. Chairman Smith stated that the Board would recess for ten minutes to allow the opportunity to come up with some kind of an agreement. When the Board reconvened, Mr. Spence stated that they were not able to come up with a consensus. First, the citizens did not want the second structure. Second, if it was allowed, they only wanted a summertime use of the facility. There was not any discussion as to the limitations beyond that. Mr. Hyland asked for the club's restrictions. Mr. Spence stated that any meetings would be in one category and that functions would be in another category. All functions would be limited to 175 people. Chairman Smith stated that the club had stated it would limit it to 150 people prior to the recess. The hours on weekdays would be from 7 P.M. to 10 P.M. and 7 P.M. to midnight on weekends. Mr. Spence stated that the number of functions would be no more than two weekends per month either on a Friday or a Saturday not to exceed twelve off-season or six per summer season. Any function to be held would be sponsored by the Mantua Club rather than by any individual member. Chairman Smith inquired as to what the club had in mind and was informed it would be Christman parties for the scouts, women's groups, etc. There would not be any private parties or graduation parties of weddings. Chairman Smith inquired about limiting the parties to six during the winter and six during the summer for a total of 12 all year. Mr. Spence stated that the six summer parties would be outdoors. There would be less impact on the neighbors when they were inside.

Mr. Hyland inquired as the number of summer parties now held by the club. Mr. Spence stated that the club had three adult and two teenage parties. Mr. Spence stated that some other restriction might be that the adjoining neighbors be notified in advance of any latenight activity. Any person or group using the facility would be asked to put up some sort of a deposit for damage to be utilized for cleanup of the neighborhood. Mr. Hyland inquired as to the charge to be imposed. Mr. Spence stated that basically it would be for overhead for utilities and heating. The group would be required to clean up. Chairman Smith stated that the club was talking about janitorial services. He stated that could be the only charge. Mr. Spence stated that the club was going to have to devise some formula on how much heat and electricity was used so that the charge covered the cost of the utilities. Mrs. Day inquired as to how the club would control cleanup but there was no response.

Mr. Hyland questioned the additional parties outside of the ones allowed during the season. Mr. Spence stated that the club operated from May through September for three months. Mr. Hyland stated that the club had the right to have six activities during those three months. Mr. Spence stated that the club would not exceed twelve parties during the nine months from September through May, two weekends per month.

MANTUA HILLS SWIMMING ASSOCIATION

R E S O L U T I O N

311

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-P-089 by MANTUA HILLS SWIMMING ASSOCIATION under Section 3-303 of the Fairfax County Zoning Ordinance to amend S-39-69 for community swimming and tennis facilities to permit addition of two tennis courts and a second floor to an existing bath house, located at 9330 Pentland Place, tax map reference 58-2((1))3, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on January 19, 1982; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. That the area of the lot is 4.684 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the applicantion and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an estension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zonig Ordinance at the discretion of the Director of Environmental Management.
7. This special permit shall be subject to all other provisions of S-39-69 previously passed by this Board.
8. The maximum number of memberships in the association shall be 560.
9. The hours of operation for the pool shall be 12:00 NOON to 9:00 P.M., seven days a week, from Memorial Day through Labor Day.
10. The hours of operation for the tennis courts shall be 6:00 A.M. to 10:00 P.M., for the existing courts and hours of operation for the proposed tennis courts shall be daylight hours only.
11. The number of parking spaces shall be 104 plus 5 bicycle spaces.
12. In connection with the association's activities during the summer season, unless otherwise qualified herein, extended-hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:
    (A) Limited to six (6) per season.
    (B) Limited to Friday, Saturday and pre-holiday evenings.
    (C) Shall not extend beyond 12:00 midhight.
    (D) Shall request at least 10 days in advance and receive prior written permission from the Zoning Administrator for each individual party.
    (E) Requests shall be approved for only one (1) wuch party at a time, and such requests shall be approved only after the successful conclusion of a previously extended-hour party or for the first one at the beginning of a swim season.
    (F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
    (G) Any substantiated compliants shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this panalty shall extend to the next calendar year.

13. In connection with the use of the association's facility for other than the summer season, the association shall be allowed extended-hours for parties or other activities as sponsored by the association, and the association shall be goverend by the following:
(A) Limited to six (6) per off-season with no more than one (1) such party or activity in any given month.
(B) Limited to Friday, Saturday and pre-holiday evenings.
(C) Shall not extend beyond 12:00 midnight.
(D) Shall request at least 10 days in advance and receive prior written notice from the Zoning Administration for each individual party.
(E) Requests shall be approved for only one (1) such party at a time, and such requests will be approved only after the successful conclusion of a previously extended-hour party or for the first one at the beginning of the off-season.
(F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
(G) Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next off-season period.

14. In connection with the association's activities such as meeting or the scouts, womens clubs, etc., that the association be permitted to allow the use of their facilities Monday through Friday from 7:00 P.M. to 10:00 P.M. and on Saturday from 9:00 A.M. to 5:00 P.M.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

Page 312, January 19, 1982, Scheduled case of

12:00 NOON — VIRGINIA HILLS BAPTIST CHURCH, appl. under Sect. 3-103 of the Ord. to allow school of general education to continue, located 6501 Telegraph Rd., R-1, Lee Dist., 92-1((1))24, 3.9239 acres, S-81-L-086.

Mr. Jack Crickenburg of 5205 Leesburg Pike informed the Board that this matter had been before them in July of 1979 and a special permit was granted at that time. There was a team inspection and the church had not complied with all of the requirements at that time. Mr. Crickenburg stated that the church was before the Board now in order to complete all of the requirements and to obtain the non-residential use permit. He stated that the school had been in operation for a number of years. They were trying to expand to a maximum of 100 children. The school operated on Tuesday, Wednesday, Thursday and a portion of Monday. Mr. Hyland stated that the staff report indicated something different. Chairman Smith stated that the Board should allow them to operate five days a week from 9 A.M. to 1 P.M. Chairman Smith questioned why the church never got an occupancy permit originally. Mr. Crickenburg stated that there was a problem with the fire doors and sprinklers. Mr. Crickenburg stated that he believed the church could convince those departments that they met the requirements. Chairman Smith inquired as to the age range of the students and was informed it was from ten months to four years. Mr. Crickenburg stated that they needed fire doors and sprinklers. They had moved the children to outside access rooms and had not reached complete agreement about the requirements.

There was no one else to speak in support and no one to speak in opposition.

Page 312, January 19, 1982 Board of Zoning Appeals
VIRGINIA HILLS BAPTIST CHURCH

RESOLUTION

Mr. DiGiulian made the folloiwng motion:

WHEREAS, Application No. S-81-L-086 by VIRGINIA HILLS BAPTIST CHURCH under Section 3-103 of the Fairfax County Zoning Ordinance to allow school of general education to continue, located at 6501 Telegraph Road, tax map reference 92-1((1))24, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on January 19, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 3.9239 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

RESOLUTION

313

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 100, ages infant through five years.
8. The hours of operation shall be 9:00 A.M. to 1:00 P.M., Monday through Friday.
9. The number of parking spaces shall be 60.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

// There being no further business, the Board adjourned at 3:10 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 7, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: July 14, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 26, 1982. The Following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Gerald Hyland and Ann Day. (Mr. John Yaremchuk was absent).

314

The Chairman opened the meeting at 8:15 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. LAWRENCE LINDSAY ROSEN, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's determination that chickens are not "commonly accepted pets", and may not, therefore, be kept on residential property less than two (2) acres in area, located 6343 Nicholson St., 51-3((13))64, Mason Dist., R-3, 30,547 sq. ft., A-81-M-011. (DEFERRED FROM NOVEMBER 24, 1981 FOR HEARING BY FULL BOARD AND DEFERRED FROM DECEMBER 1, 1981 FOR HEARING BY FULL BOARD).

Chairman Smith announced that the Board was still without five members but the fifth member had waived his right to hear the appeal. Mrs. Jane Kelsey represented the Zoning Administrator in the appeal hearing. She informed the Board that the application was an appeal of the Zoning Administrator's decision that chickens were not pets and could not be kept on less than two acres. On September 2, 1981, Senior Zoning Inspector Joseph Bakos had inspected the Rosen property and determined that six hens were being kept there. On September 23, 1981, Mr. Bakos advised the Rosens by letter that they were in violation of Sect. 2-512 and Mr. Rosen had filed his appeal. Mrs. Kelsey informed the Board that Mr. Bakos was present to answer any questions concerning the appeal.

Mr. Lawrence Rosen of 6343 Nicholson Street in Falls Church was the appellant. Chairman Smith defined the issue as to the appeal which was an appeal of the decision that chickens or hens were not commonly accepted pets and could not be kept on lots less than two acres in size. Mr. Rosen agreed that was the appeal and agreed to stick to that issue. Mr. Rosen raised a point of order. He stated that he was sure the Board followed proper procedures and one was due process. It was Mr. Rosen's understanding that at the last public hearing, some of the neighbors had presented a petition. Mr. Rosen stated that he had requested the petition and had not seen it. Mr. Rosen informed the Board that he wanted to review the petition. However, as an alternative to due process, Mr. Rosen proposed that the petition be excluded from the hearings. Mr. Hyland inquired if the Board had the petition and Chairman Smith indicated that he had not found one in the file. Chairman Smith stated that the Board did not have the petition although they had a position statement. The citizens who had the petition submitted it to the Chairman. Chairman Smith stated that it was a normal petition that the Board received at many public hearings and there was nothing unique about it. Mr. Hyland stated that there was something different in this petition and that was the fact that the citizens had raised a covenant which would prohibit the keeping of chickens. Chairman Smith stated that covenants were something the Board would normally ignore. Mr. Hyland stated that was exactly his point and indicated that he for one would not consider that as part of what the Board was trying to decide. Mr. Rosen stated that he was about to make that comment. He stated that the first paragraph of the petition was a recitation of the Ordinance which was in question. The second paragraph referred to the covenants which were not germane. Mr. Rosen stated that the petition really added nothing to the appeal.

Mr. Rosen stated that the Board was in receipt of his written submissions. The key elements to the appeal were his constitutional rights for the use and enjoyment of his private property under the Bill of Rights. He stated the Bill of Rights guaranteed him the right to the use of his private property. Chairman Smith stated that the constitution and the Bill of Rights were not for the BZA to interpret. He stated that the Board had to interpret the Ordinance the way it was written. The constitutionality of it was not under question. Mr. Rosen stated that he was not challenging the text of the Ordinance. He was appealing the Zoning Administrator's overly restrictive and over zealous application of the Ordinance with regard to commonly accepted pets. Mr. Rosen wanted it understood that he was not challening the Ordinance but the interpretation put upon it by the Zoning Administrator. Mr. Rosen stated that the BZA had to consider the rights of the individual property owner and the welfare and good of the community. Mr. Rosen stated that he should not jeopordize or infringe upon the rights of others.

Mr. Rosen informed the BZA that he had five hens and did not need to discuss the personal enjoyment the hens gave to him. He stated that the hens did provide personal satisfaction to him. The other question was one of nuisance value or what threat the hens could pose to anyone else. There was the alleged health hazard, smell and noise. Mr. Rosen stated that he had researched the matter with the Department of Health and there was no known case of any health threat or disease. With regard to smell, five hens kept under proper conditions created no more smell than the average population of sparrows. With regard to noise, the hens did make clucking sounds.

Mr. Rosen mentioned an Arlington County Court Case involving chickens. He informed the Board that chickens were permitted in Arlington and the only controls were setbacks. He cited the case of one individual who was in violation of the Ordinance in Arlington. That individual

315

had twelve hens and one rooster. Chairman Smith informed Mr. Rosen that what happened in other jurisdictions was one thing. He stated that the BZA had to interpret the Fairfax County Ordinance. Chairman Smith stated that he was sure the BZA all liked chickens. Chairman Smith stated that he could not keep chickens on his one acre lot because the Ordinance prohobited it. He thought it was unfair but he had to abide by the Ordinance. Mr. Hyland stated that he agreed with the Chairman about the other jurisdictions but he, as one member of the BZA, was interested in any jurisdiction that had an Ordinance similar to Fairfax County's which interpreted the language. For example, if chickens were considered pets, he wanted to know that as that was the issue before the BZA. Mr. Hyland questioned what was "commonly accepted" pets. He stated that the question the BZA had to wrestle with and the experiences of any contiguous jurisdiction would be of interest and would have some bearing. Chairman Smith stated that the reason he asked if Mr. Rosen had the Ordinance. Mr. Rosen replied that it did not exist. He stated that Washington, D.C., for example, did not have any specific prohibition against the keeping of any animal such as chickens. There was a health regulation and a nuisance Ordinance.

Mr. Rosen stated that Arlington County had a slight prohibition. The Judge had ruled against the Zoning Administrator on the individual's property rights over the community interest. The Judge had ruled that no material damage was done to the community. Chairman Smith stated that Mr. Rosen had to refer to a certain section of the Ordinance. Mr. Rosen stated that this was not a court of law and he was trying to give the BZA some context.

Chairman Smith stated that Mr. Rosen did keep five of six chickens or hens on his property and had been doing so as he had been cited for it in the violation notice. Mr. Rosen replied that he had five hens at the present time. He had five or seven at times during the past several years. Chairman Smith inquired if the chickens were present when the Zoning Inspector inspected the property and was informed by Mr. Rosen they were.

Mr. Rosen stated that the easiest framework for him to present the appeal was Mr. Yates' letter to the BZA dated November 18, 1981. The Zoning Administrator had based his position on the dictionary definition of fowl which indicated a bird of any kind. Mr. Rosen stated that the definition did not serve his purposes. In the State of Virginia, fowl were birds which were raised for consumption. Mr. Rosen stated that if Mr. Yates' definition was correct, then on the basis of national statistics, 7,500 people in the County were breaking the law with budgies and any other canary. Mr. Hyland stated that the Ordinance allowed those kinds of pets as being accepted pets. Mr. Rosen stated that he had attempted to call the Zoning Administrator's office to determine what types of birds are permitted. The only answer he had received was that you could not have chickens, pigeons, geese or ducks. Fowl was not allowed on less than two acres with the exception of parakeets. Mr. Hyland inquired if the hens were fowl. Mr. Rosen stated that according to the Federal Government definition they were not fowl. Mr. Hyland inquired as to what definition should be used, if any, by the Board of Zoning Appeals. Mr. Rosen replied that the BZA needed to make some kind of definition. The Federal Government and the State Government and the Ohio Court Case indicated that fowl was a bird raised for consumption.

The prohibition of any livestock and fowl and animals of a wild nature seemed clear that the Ordinance was to prevent property owners from turning their property into zoos or into farms. Mr. Rosen stated that five guinea hens did make a farm. Mr. Hyland questioned Mr. Rosen as to the Ordinance. According to the Ordinance regarding the keeping of livestock and fowl, Mr. Hyland inquired as to what Mr. Rosen would define as being in the definition of "fowl". Mr. Rosen stated that it would be birds raised for commercial purposes. Mr. Hyland inquired as to where that came from. Mr. Rosen stated that it was further down in the definition. He believed it was in the Ordinance to prevent property owners from turning their property into zoos or farms. Mr. Yates' position was that no birds were allowed.

Mr. Hyland stated that Mr. Rosen had indicated that the manner in which the Zoning Ordinance provision should be read with respect to the first part of the Ordinance suggested that the keeping of livestock, fowl or any animal of a wild nature shall not be allowed except for rabiits which shall not be commercial purposes. Mr. Hyland inquired if the sentence regarding commercial purposes should apply to the first line of the paragraph. Mr. Rosen stated that it applied to the exception that livestock and fowl were not for commercial purposes. Mr. Hyland stated that Mr. Rosen had suggested that fowl was a bird kept for commercial purposes. Mr. Hyland inquired if the Ordinance literally stated that. Mr. Rosen stated that it did not but he stated that you had to look at the intent.

Mr. Rosen proceeded with his appeal by addressing another issue. There was a Code which restricted the sale of baby chicks which established that baby chicks were pets. Mr. Rosen stated that the law recognized that hens were pets or they would not be trying to restrict the sale as pets. As far as being "commonly accepted pets", the Code recognized the need to prevent cruelty to animals as people would have baby chicks as pets. Mr. Rosen stated that there were not many chickens around which was why they were not commonly accepted pets. He stated that there were not many people who would come and fight for their position like he would.

Mr. Rosen stated that Mr. Yates recognized that chickens were pets. He stated that the BZA had to deal with the question of commonly accepted pets. Mr. Rosen did not believe that the

316

Zoning Administrator should be allowed to set himself up as an arbitrator of taste. Mr. Rosen stated that you could not argue about taste. He asked the Board to look at the exceptions in the present Ordinance which referenced guinea pigs, parakeets and mice. Mr. Rosen stated that mice were not commonly accepted pets as they were pests. Mr. Rosen stated that this was an area of taste and preference. Mr. Rosen inquired as to the harm inherent in the species. The catchall phase in the Ordinance was the "commonly accepted pets".

Mr. Hyland inquired as to how it would be determined what was commonly accepted pets. He asked if it should be determined by what was sold in a pet store, or by what was normally kept by people excluding those animals not normally kept. Mr. Hyland asked what testimony would be acceptable to determine what was a commonly accepted pet. Mr. Rosen replied that he did not think he or the BZA needed to define that issue. He stated that he would come back to that issue. From a legal point of view, Mr. Rosen stated that the issue was void for vagueness. He stated that commonly accepted pets should not exclude something particularly because it was not mentioned. Mr. Hyland inquired about an elephant and was informed by Mr. Rosen that it was not a commonly accepted pet. Mr. Hyland asked why not. Mr. Rosen replied that an elephant was a potential problem for other people. They were difficult to take care of and could get loose.

Mr. Hyland asked if the fact that most people did not have chickens as pets influence Mr. Rosen in that they would not be a commonly accepted pet. Mr. Rosen stated that the burden of proof was not on him. He felt it was ample to show what he already had. Mr. Rosen stated that Mr. Yates had agreed with his position that chickens were regarded by the Code as pets. Mr. Rosen stated that the Board was dealing with acceptability. Mr. Hyland inquired of Mr. Rosen as to what evidence he had that hens were commonly accepted pets. Mr. Rosen replied that everything was relative from dogs, cats and down to canaries. Mr. Rosen stated that he could very well be the only resident with pet hens. He informed the Board that he did not think there was an easy solution to the problem they were dealing with. Mr. Rosen stated that the County was over defined and over regulated. He stated that reliance was based on other Codes which were undesirable. He stated that if he had to define it, he could think about it a little bit and come up with a solution. Mr. Rosen stated that he felt the existing definition was void for vagueness.

Chairman Smith stated that Mr. Rosen was questioning the restrictive nature of the Ordinance. It was not the Board's responsibility to interpret the Code in other jurisdictions. The question was the interpretion of the Fairfax County Ordinance with regard to the keeping of livestock or fowl. Chairman Smith stated that the matter was getting far afield from what the appeal was about. He stated that Mr. Rosen had made many statements and some people might agree with him. Chairman Smith stated that the Board had to interpret whether the keeping of hens was allowed as adopted by the Ordinance. Chairman Smith stated that he was raised with chickens and hens and they were fowl. Chairman Smith stated that was the intent of the framers of the Ordinance and it was well known to the adopting bodies.

Mr. Rosen continued to argue that chickens were not fowl. Mr. Hyland stated that the Zoning Administrator had said that chickens were fowl. In the definition , it was the first language and, secondly, it went on to be more specific. Mr. Hyland stated that chickens were fowl. The Zoning Administrator had not said what else may or may not be fowl. Mr. Hyland stated that he did not care about anything else. Mr. Rosen stated that if you called up the Zoning Administrator's Office, you would not get a straight answer. Mr. Hyland stated that you would get that chickens were fowl. Mr. Rosen defined fowl as being a member of the bird family that was raised for human consumption. He argued that his hens were not raised for that purpose. Mr. Hyland inquired as to whether that made any difference and whether that made the chicken any different. Mr. Hyland stated that Mr. Rosen was saying that the category or the use he put it to changed the case under which it was put on the Earth. Mr. Rosen stated that he was only citing the State government definition of fowl. Mr. Rosen stated that if the County followed that definition, then he would be allowed to follow his purpose and keep someone from keeping 100 chickens.

Chairman Smith stated that Mr. Rosen did have the chickens for the purpose of consumption as his letter indicated that the chickens produced eggs. Mr. Rosen stated that the eggs were an incidental bonus. Chairman Smith inquired if Mr. Rosen agreed that a chicken was a fowl. Mr. Rosen stated that he did not agree. Chairman Smith asked for further comments from Mr. Rosen. Mr. Rosen stated that rather than attempting to overregulate, the Board could take a different approach which would eliminate the problem. Chairman Smith inquired as to where Mr. Rosen had acquired the definition of fowl and whether he had documentation for the record. Mr. Rosen stated that he could draw it up. Chairman Smith questioned Mr. Rosen as to whether he would agree that even under all of these definitions, a chicken would be considered a fowl. Mr. Rosen stated that it depended. He asked when a dog was considered to be a pet as many countries ate dogs. That did not mean that the dog was raised to be eaten. Mr. Rosen stated that just because chickens were raised to be eaten did not mean that it was true.

Mr. Hyland stated that if the BZA accepted Mr. Rosen's suggestion that fowl should be restricted to chickens that were raised for commercial and human consumption and excluded those, it would permit him to keep the five hens. Mr. Hyland asked what limitation was in the Ordinance that would restrict the number of hens other than nuisance. Mr. Rosen replied that there was a common sense limitation. If a number was necessary, there was ample precedent in

other Ordinances. Mr. Rosen stated that there was a limitation on the number of dogs. One dog was allowed no matter how small the area. Two dogs are lots of 10,000 sq. ft. or more. He stated that someone having more than 50 hens or dogs had gone beyond pets and would be in a commercial nature. Mr. Rosen stated that he was trying to propose a workable distinction.

317

Mr. Hyland stated that there was another definition and that was the keeping of livestock. If you followed the same Department of Agriculture definitions, you would find an analogous term for the definition of livestock which would refer to those types of animals which are raised for commercial purposes. Mr. Hyland questioned whether that would permit someone to have cows on lots of less than two acres. Mr. Hyland stated that the Agricultural Department was concerned with animals and those who were in the business of raising them. Mr. Hyland questioned whether the definition would permit the keeping of cows. Mr. Rosen replied that he had no objection to someone keeping a pet calf. However he stated that his case was an appeal to the BZA. If someone wanted a pet cow, they would have to present their own case. Mr. Rosen stated that he was not trying to blow the Ordinance. This was an appeal of the Zoning Administrator's position with respect to his five hens.

The following persons spoke in support of the appeal. Mr. David Burke of 4436 Sleepy Hollow Road informed the Board that the keeping of chickens was allowed under the previous Ordinance and he had raised them as pets. Chairman Smith advised Mr. Burke that the BZA was dealing with the current Ordinance. Mr. Burke stated that his neighbor's german shepherd had eaten his pets.

The next speaker in support was Mrs. Valerie Hines of 3032 Beechwood Lane in Sleepy Hollow. Mrs. Hines stated that she spoke for most of the people in Sleepy Hollow and they had taken the position that residents could own and keep a few hens as being acceptable. She stated that they had not heard complaints about hens. She informed the Board that she was a vegetarian and regarded all animals that were not wild as potential pets. Mrs. Hines felt that horses and cows should be restricted on small lots. Chairman Smith informed Mrs. Hines that she was wandering from the interpretation that the BZA was responsible for. If she felt the Ordinance was too restrictive, then she needed to amend the Ordinance. Mrs. Hines stated that the citizens were trying to keep the area as rural as possible. The threats to the area were from the encroachment of business and fast food restaurants. She stated that was what they were fighting against. Mrs. Hines stated that hens were pets and that she wanted to get a hen as a pet. Mrs. Hines considered hens pets just like a hamster or a dove.

The next speaker in support was Mrs. Ann Anderson of 3103 Beechwood Lane in Falls Church. Mrs. Anderson stated that it was a loose definition that pets were domesticated animals that could respond to people. Mrs. Anderson stated that she had three children and taught them to respond to their names. She stated that the BZA had to consider why individuals kept hens. Some individuals kept hens for their eggs. She stated that hens were kept in cages and never felt any green grass. As the eggs came down the belt, they were injected with dyes. Mrs. Anderson stated that her point was that a lot of people kept hens to avoid the coloring in their food. Mrs. Anderson stated that she had a child that was hyperactive. Chairman Smith stated that Mrs. Anderson was out of order as she was straying from the issue before the BZA. Mrs. Anderson stated that the hens were very important to Mr. Rosen. Mrs. Anderson stated that her point was that Mr. Rosen had kept the chickens for ten years. The neighbors had just started complaining about them recently.

The next speaker was Louann Brown of 3402 Fenora in Sleepy Hollow. She stated that everyone had different backgrounds. It may be one way one place and another way another place. Mrs. Brown stated that hens were pets. She informed the Board that her daughter had a pet chicken. The chickens got along fine with the neighborhood and were kept very sterile. Mrs. Brown stated that she wanted some character in the area. The pet of choice in that area was dogs. Mrs. Brown stated that she would rather have five chickens. Chairman Smith stated that dogs were permitted pets. Mrs. Brown stated that she hoped the BZA would consider hens as pets also.

Mr. Godfrey Temple of 3120 Sleepy Hollow Road informed the Board that he had chickens as pets and his children had pets as children. In response to questions from the Chairman, Mr. Temple stated that was 40 years ago in the State of Ohio. Chairman Smith stated that he had had pets on his farm. Mr. Temple stated that where he lived, chickens were considered pets.

There was no one else to speak in support of the appeal. Mrs. Thelma Lind of 3032 Castle Road in Falls Church spoke in opposition to the appeal. She stated that she had resided at this address for the past 27 years. The petition in opposition was signed by 85 citizens of which 10 individuals from Sleepy Hollow were also signers. She stated that they had carefully studied the matter and find themselves in complete accord with the Zoning Administrator A more lenient interpretation should not be permitted by the BZA.

Mr. James Chappman of Castle Road also spoke in opposition. He informed the Board that at the previous hearing he had presented the petition to the staff and was advised to keep it until the next meeting. Mr. Chappman informed the Board that Mr. Rosen had not resided at the property for ten years. He had only recently moved in withing the past year or so. Mr. Chappman informed the Board that they were only concerned with the present location. Mr.

318

Chappman stated that the citizens felt that the Ordinance had been dissected and destroyed. Mr. Chappman stated that it was quite clear that the keeping of animals should not be allowed on any lot of less than two acres. Second, the Ordinance did not limit the keeping of commonly accepted pets for personal enjoyment. Mr. Chappman stated that the citizens supported that position. Mr. Chappman read a statement into the record and presented it for the record from the concerned citizens of Fairfax County. Mr. Chappman stated that the television had shown a feature on Mr. Rosen's hens and it was indicated that they produced consumable eggs. Mr. Chappman stated that the article in the Washington Post indicated that they produced eggs. There was no doubt that they produced eggs.

Mr. Chappman stated that the hens produced eggs and were used for utilitarian purposes and were not for pleasure. Mr. Hyland stated that he was having enough trouble. If the hen laid egss, that did not mean it was for utilitarian purposes. He inquired if Mr. Rosen sold the eggs. Mr. Chappman stated that the Rosens consumed the eggs for their own use.

Mr. Chappman stated that another point was the commonly accepted pets. If a neighbor had a dog, it would romp and play with the owner. Mr. Chappman stated that he had never seen the fowl romping or playing or accompanying the family on outings. Feathered pets were kept indoors. With regard to Section 41-7.4 of the State Code relating to the sale of poultry as pets, Mr. Chappman stated that this was a zoning matter so that the cruelty to animals did not come into it.

In summary, Mr. Chappman stated that the signers of the petition strongly supported the position of the Zoning Administrator and agreed with his statement of interpretation.

The next speaker in opposition was Mr. William Thorton of 3031 Hazelton Street. He was a realtor and appraiser and a member of the Buffalo Hills Civic Association. Mr. Thorton stated that the last sentence of Section 2-512 indicated that all pets were to be confined to the interior dwellings or other accessory buildings. Mr. Thorton stated that the chicken coop was probably built within the past six to eight months and that a building permit was necessary to construct it. He advised the Board that only an electrical permit had been obtained.

The next speaker in opposition was Mr. Bob Beers, a representative of Tom Davis' Office in Mason District. Mr. Beers stated that chickens were not commonly accepted pets. He presented the Board with a letter outlining their position.

In response to questions from the Board, Mr. Rosen stated that he only occupied this property for 1½ years. Previous to that, he had resided around the corner. Chairman Smith inquired as to the structure shown in the news article. Mr. Rosen responded that it was a playhouse for his daughter. Chairman Smith inquired if a building permit had been obtained. Mr. Rosen responded that it was a temporary structure. Mr. Rosen informed the Board that he had kept chickens in Fairfax County for the past ten years.

During rebuttal, Mr. Rosen stated that he did not see the need to go through the details of meterials given by Mr. Chappman. Most of it was irrelevant including the point of what Mr. Rosen did with his chickens. As far as the utilitarian aspect, Mr. Rosen stated that seemed to be a major issue. He was sure that many neighbors that kept dogs did so because of the utilitarian aspect. Mr. Rosen stated that the key issue in this matter was that no one who had objected had in any way stated any material drawback to the chickens. Eighty of the people were not aware of the chickens until asked to sign the petition. The definition of pet was something that was kept for personal enjoyment. If you took the Code itself as to what constituted "personal pleasure" and that was his case.

During rebuttal, the Zoning Administrator, Mr. Yates, stated that he hated to belabour the issue. However, several points needed comments. Mr. Rosen had challenged his over zealous interpretation of Sect. 2-512. Mr. Yates stated that in the memorandum dated November 18, 1981, his interpretation was straight forward and uniform and long-standing. Chickens were not pets in Fairfax County. Mr. Yates stated that chickens might be pets in Ohio or in Fauquier County or in Arlington County but not in Fairfax County. The language set forth in Sect. 2-512 was not Mr. Yates' language. The language of Section 2-512 was adopted by the Board of Supervisors. Mr. Yates stated that it was not his language, not his tastes and not his judgement. Mr. Yates informed the Board that one point was out of context. He stated that he had never conceded that hens or chickens were pets. He stated that the statement in the staff report was that no one had questioned that the hens were pets in Fairfax County. Several citizens had called the Zoning Administrator about the type of fowl that was permitte which was a less than direct response. Mr. Yates stated that there was nothing unusual about that. If his staff was asked a general question, they could only give a general response. Mr. Yates warned the BZA that it was very difficult to go to other Codes and other Ordinances to use their definitions to administer the Fairfax County Ordinance. Mr. Yates stated that you had to know the basis. On the same token, Mr. Yates stated that he could not go to other Codes in Fairfax County. Mr. Yates stated that he had interpreted the Code as with all of hi provisions and his administration was uniform and straight forward. Mr. Yates stated that it was his judgment that the proper forum was the Board of Supervisors for an amendment to th Ordinance. Mr. Yates stated that it was his position and would continue to be so to administer the Code and interpret it in that fashion until there was an amendment adopted by the Board.

Mr. Hyland stated that the Zoning Administrator, in administering the Ordinance, applied somewhat inexact lnaguage which read "other similar commonly accepted pets". He questioned that factors the Zoning Administrator considered as to what constituted other pets other than the Zoning Administrator's own personal evaluation. Mr. Yates stated that he did not deviate from the examples given in the Ordinance. He stated that he was leery to go astray. He informed the Board that he had been confronted with pigeons, monkeys, donkeys and goats. Mr. Hyland questioned that in making his evaluation, what did the Zoning Administrator consider in concluding that they are not other "commonly accepted pets". Mr. Hyland stated that there had to be some criteria. Mr. Hyland stated that the Board had had four or five people inform them that they considered hens as pets. Mr. Hyland questioned how the BZA was to answer that question. What factors did they consider other than their own reactions. Mr. Hyland stated that he felt chickens were fowl. The one thing that threw him was how the BZA figured out what was "commonly accepted pets" or whether the BZA should look outside their experience with the community. Mr. Hyland stated that he was struggling with that.

Mr. Hyland inquired as to how the Zoning Administrator could say that this is the test that he followed and it was consistent. He asked what he was looking at. Mr. Yates stated that he was looking at what was specifically set out in the Ordinance and what was proposed. Mr. Yates stated that he was definitely influenced by the language in the first paragraph. Fowl were not permitted on less than two acres. Mr. Yates stated that anything other than livestock or fowl was a judgment call. He stated that with reference to most of his decisions, he did not rely on his personal judgement but on the staff's judgement as well.

After closing the public hearing, Chairman Smith asked for the Board's decision in the appeal. Mr. DiGiulian moved that in Application A-81-M-011, that the Board of Zoning Appeals uphold the decision of the Zoning Administrator that chickens or hens were not similarly, commonly accepted pets. Mrs. Day seconded the motion.

During discussion of the motion, Chairman Smith added that Sect. 2-512 was very specific on the keeping of livestock or fowl. Chairman Smith stated that chicken were fowl. The vote on the motion to uphold the decision of the Zoning Administrator passed by a vote of 4 to 0. (Mr. Yaremchuk being absent).

//

Page 319, January 26, 1982, Scheduled case of

8:30 P.M. MONTESSORI CHILDREN'S CREATIVE CENTER, INC., appl. under Sect. 3-E03 of the Ord. to permit nursery school, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2 ((1))8, 7.0 acres, S-81-D-085.

Mr. Robert Newhall of Great Falls, Va. represented his wife who was ill. Mr. DiGiulian noted that the last three cases were on the same parcel of land. Chairman Smith stated that he was aware of that but they were three separate applications. Mr. Newhall informed the Board that they had been using the church for their school. Chairman Smith inquired if the school had a lease with the church. Reverend John Miller, Victor of the Church, informed the Board that they were in the framework of negotiations for a lease but none had yet been formulated. Chairman Smith announced that the staff in checking out the application had discovered that the driveway for the church was not asphalted. The pictures indicated a gravel driveway and parking and a dustless surface was required. Chairman Smith stated that the Board could go ahead and hear the case but it would have to have full compliance with the Ordinance. Mr. Newhall inquired if paving was the only way to solve the problem. Mr. DiGiulian inquired of Mr. Yates as to whether if the special permit were granted for the school, would it preclude him from requesting a variance from the dustless surface requirement after the approval. Chairman Smith stated that the applications should be heard concurrently. Mr. Yates stated that was a normal procedure. Mr. Yates stated that the Board could grant the special permit but recognize that the applicant had to pave the surface or apply for a variance to the requirement.

Chairman Smith inquired if the applicant intended to come back to the Board for a variance. Mr. Covington stated that he had spoken with a representative of the church. Mr. Paul Ward was a lawyer but not a zoning lawyer. Mr. Ward asked the Board to accept the application and hear the special permit application. Chairman Smith stated that he had a problem with allowing the other use without requiring them to meet the Ordinance. The school was a five day a week operation. He asked what the justification was for granting the school without the variance. Chairman Smith stated that if the school could obtain a site plan waiver, that was another matter. Mr. Yates stated that he was not saying that the applicant had a good case for obtaining a waiver. Chairman Smith stated that the school was not the owner of the property and did not have a hardship. Chairman Smith stated that the Board had been going along with the church for years. They wanted the trailers and the Board had been going back and forth. Chairman Smith stated that there came a time when the Board had to require them to stick with the regulations. Chairman Smith stated that he would have a real problem with the variance as the Board had allowed the church to continue that way for a long time.

320

Mr. Ward stated that he did not believe the special permit application for the school should be delayed as to whether the church had to pave or whether the BZA should consider a variance. He stated that the special permit could be conditioned on the variance. Chairman Smith stated that he did not know what justification the school would have. Chairman Smith stated that the regulations had to be complied with as the church was not expanding the use. Mr. Covington stated that it had been an oversight on the part of the staff when the application was accepted. Mr. Covington stated that there were two trailers on the site for two year increments and when the Code changed, the whole facility came under a special permit.

Chairman Smith stated that the first special permit was granted in 1966 for three years and then the Zoning Administrator was given the authority to grant a three year extension. Chairman Smith stated that the church would not have required a special permit back in 1966. Mr. Covington stated that the church came back to the Board in 1979 for the trailers. He stated that when a use came to the Board, it brought the property under the special permit control.

Mr. Hyland stated that what Mr. Ward was suggesting was that the Board hear the special permit for the school understanding that something had to be done with the paving. Mr. Hyland stated that the applicant had the right to request a variance. Chairman Smith argued that the Montessori School was not an aggrieved party and did not own the property and could not request the variance. Mr. Yates suggested that the BZA place a condition on the special permit that the applicant go to the church to lay some asphalt or the church could apply for a variance. Chairman Smith stated that he had a problem with the school not meeting the requirements of the Ordinance as this was a five day operation. Mr. Yates stated that he agreed with the Chairman but that was a consideration for the Board at the time they heard the variance. Chairman Smith stated that the church might not want to be a party to the request and how could the Zoning Administrator make them come in. Mr. Yates stated that the special permit could be granted with the requirement that a dustless surface must be provided Chairman Smith stated that the church had been operating there since 1966 prior to the use permit requirements. But now the church was under the special permit and had been since 1979 Mr. Yates stated that the approval in 1982 could only be based on the conditions of 1982 being provided. The church had to provide the paving or apply for a variance. They did not have any grandfathered rights. Mr. Hyland stated that the Chairman was going to dovetail on whatever was done with the application.

Chairman Smith stated that he felt the Board should hear the variance request. He had no problem with allowing the church without meeting the conditions but he did have a problem with allowing the school without meeting the criteria. Chairman Smith suggested that the application be deferred and maybe there would be five Board members present at the next hearing. Mrs. Day stated that if the church did not need to pave of its use, why would they want to pave it for the school. Chairman Smith stated that the church might not want to pave it.

Chairman Smith asked the Board if they wanted to hear the three cases tonight. Mr. Hyland inquired as to the church's plans for the paving. Mr. Ward stated that he could see that the church had not kept up with the Zoning Ordinance. The church had been to the Board on a number of occasions and requested special permits on the promise that a new church would be built. Mr. Ward stated that he could report that circumstances had changed. The church had begun the 1981 calendar year with a building fund and had begun a building fund campaign. The critical mass was there. Chairman Smith inquired as to the time table. Mr. Ward stated that construction would begin in three years. Chairman Smith stated that Mr. Ward was not a party to the application back in 1976, but that year he had heard the same thing from the church. Mr. Ward stated that with respect to the other sides of the issue, the paving was a surprise to them. The church had addressed their position before and the variance had never been discussed. Mr. Ward stated that the church was before the Board on two other occasions and now they were told they were in violation of the dustless surface requirement. Mr. Ward stated that the church was surprised by the requirement. The church had been there over ten years. There was a gravel parking lot and entranceway. There was not any dust. The church was surrounded by land. It would be a waste of money and foolish to have to pave the parking lot and them dump it off.

Chairman Smith stated that as far as the church use, the Board may have felt the same way in the past. Now the church was requesting a second use. Chairman Smith stated that he did not have a problem as far as the driveway but a new use operating for five days a week did bother him.

Chairman Smith asked whether the Board was going to hear the three cases or defer them. Reverend Miller, Victor of the church, informed the Board that his thinking was very much like the Chairman's. He gave the Board a little background on the church's relationship to the school. Mr. Miller stated that the church wanted to be supportive but they had made it clear to the school when they approved it that they could not accrue additional financial expenses. Reverend Miller stated that additional use requests should not jeopordize the church's use. He stated that the surface issue had not been raised before and the church was unprepared to address the lot issue very thoroughly.

321

Chairman Smith inquired if the school used the trailers also. Reverend Miller stated that the school would not use the trailers except for storage. Chairman Smith asked the Board for some direction as to whether it should consider the three cases. Chairman Smith stated that it seemed to him that if the Board considered a new use here, it was necessary for them to get a variance. He did not know how the school would justify the variance. Mr. Hyland stated that he would not have any problem with letting the Montessori people have their school and waiving the dustless surface requirement. Mr. DiGiulian stated that he did not have a problem with letting them come back for a variance. However, it would make it neater if they were all tied together.

Mr. Ward stated that if it was the feeling of the Board that a variance would be granted for the church for a certain period of time, what purpose would it serve to go through the variance procedure. He asked the Board to continue the case. Mr. Hyland stated that Mr. Newhall would ask to do the same thing. Mr. Newhall asked the Board to defer his application for the same period of time.

Mr. Charles DiBona informed the Board that his property surrounded the whole church property. He stated that he was completely unaware of the problems with the lot and did not care whether it was gravel. In fact, Mr. DiBona stated that he preferred the gravel. Mr. DiBona stated that he had come to talk about the school. Mr. DiBona stated that he wanted some limitations or conditions on the time of the permit as he did not know if the operation of the school would affect his lifestyle. Chairman Smith advised Mr. DiBona that the Board would take his concerns under consideration.

Mr. Yates stated that there would not be a problem with amending the present application. Chairman Smith stated that the staff should assume responsibility for the advertising and the notification. The matter was deferred until March 9, 1982 at 10:30 A.M.

//

Page 321, January 26, 1982, Scheduled case of

8:45 P.M. TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN, appl. under Sect. 3-E03 of the Ord. to permit continued use of two trailers for Church School purposes, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, S-81-D-084.

At the request of the applicant, the special permit was deferred until March 9, 1982 at 10:00 A.M.

//

Page 321, January 26, 1982, Scheduled case of

9:00 P.M. TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN, appl. under Sect. 18-401 of the Ord. to continue to allow trailer to remain 2.4 ft. from side lot line, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, V-81-D-230.

At the request of the applicant, the variance was deferred to allow an amendment to include a variance to the dustless surface requirement. The variance was deferred until March 9, 1982 at 10:10 A.M.

//

Page 321, January 26, 1982, Scheduled case of

9:15 P.M. THOMAS F. JARAS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard & 19 ft. min. rear yard req. by Sect. 3-107 & 2-412), located 1091A Pensive Ln., 12-4((7))39A, Dranesville Dist., R-1(C), 22,740 sq. ft., V-81-D-200. (Deferred from January 19, 1982 for decision only).

Mr. DiGiulian informed the Board that this was the variance that had been deferred so that he could go out and take a look at the property. He explained that he would prefer a further deferral as he had not had an opportunity to look at the property and asked that it be scheduled for the spring. It was the consensus of the Board to schedule the decision for Tuesday, February 9, 1982 at 12:00 Noon.

//

Page 321, January 26, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for February 12, 1980 and February 19, 1980. Mrs. Day moved that the Minutes be approved as written. Mr. Hyland seconded the motion and it passed by a vote of 4 to 0 (Mr. Yaremchuk being absent).

//

322

JUBE B. SHIVER, SR.: The Clerk informed the Board that at the meeting the previous week, the BZA had approved a variance to allow Mr. Jube Shiver to subdivide his property into five lots, three of which would have a pipestem width of 10 ft. each. She informed the Board that apparently there had been an error in the application in that Mr. Shiver had originally filed for a variance to allow a subdivision into four lots, with three pipestems. Someone had allowed him to substitute plats without realizing that it included an extra lot that had not been advertised. The BZA had held its hearing and never discussed the number of lots and had signed approval on the five lot subdivision.

It was the consensus of the Board that the Clerk seek the advice of the County Attorney in the matter.

// There being no further business, the Board adjourned at 9:30 P.M.

BY Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on July 19, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: July 26, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 2, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman, Ann Day, John Yaremchuk and Gerald Hyland.

The Chairman called the meeting to order at 10:00 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. MICHAEL FANSHEL, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that the appellant's use of a single family dwelling for three (3) separate dwelling units is a violation of Sect. 2-501 of the Zoning Ordinance, located 3209 Collard St., 92-2((19))40, Lee Dist., R-2, 16,200 sq. ft., A-81-L-012.

Mrs. Jane Kelsey presented the facts regarding the case and the Zoning Administrator's position. She stated that the Zoning Administrator made the decision that the occupancy of three apartments in a dwelling on property zoned R-2, which District permits only one single family dwelling unit per lot, constitutes a violation of Sect. 2-501 of the Zoning Ordinance. Mrs. Kelsey stated that a verbal complaint had been received by the Zoning Enforcement Branch alleging that the dwelling was being used as three apartments. Initially from looking through the file, it was considered to be a non-conforming use, therefore no action was taken. After this case was brought to the Zoning Administrator's attention, he reviewed the background information in the file and was unable to establish a basis for the positions that had been represented by the various staff members in the past. Further research led to the conclusion that despite its existence since 1945, the use of this dwelling for three apartment units was not a legally established non-conforming use. The owner of the property, Michael Fanshel, was advised of this position, and subsequently filed this appeal.

Mrs. Kelsey stated that staff had researched all of the previous Zoning Ordinances in an effort to establish whether at some point in time multiple or duplex units would have been a permitted use on this property. This research led to a negative finding.

Mr. Hyland asked if this was the only structure in the area with similar characteristics. Mrs. Kelsey replied that the office had established that there are several others in the same area.

In response to a question from Mr. Hyland, Mrs. Kelsey stated that the time of construction could only be estimated since we do not have a copy of the building permit. The date the house was constructed is estimated to be 1945. If it was constructed prior to 1941 it would be a non-conforming use. Mrs. Kelsey stated that she had talked to the original owners of the property and they indicated that the house was built in 1945.

Mr. Philip Yates stated that there were a series of these dwellings that were constructed back in the early 40's in conjunction with Ft. Belvoir for military families. The subject property has been used in this manner since 1946 or 1947.

Mr. Hyland brought up the fact that other properties in the same general area have similar dwelling units. Mr. Yates stated that these properties did not have any impact on this appeal, but an action should be taken to remedy this problem. Possibly an amendment of the Ordinance to recognize these older uses.

Chairman Smith stated that during the discussion it was discovered that the appellant purchased this property recently. The previous owner was the owner since the dwelling was constructed, and he resided in the house. Chairman Smith asked if the appellant lived on the property. Mr. Yates replied that it was his understanding that Mr. Fanshel did not live on the subject premises, but that he leased out all three units.

Chairman Smith asked for any speakers in support of the Zoning Administrator. The first speaker was Mr. Tom McCann of 3207 Collard Street, the house adjacent to the house in question. He stated that he was also the President of the Groveton Citizens Association. He handed the Board Members a copy of a letter and a petition with 44 signatures from the Groveton area. The letter stated that the property owners were opposed to this single family unit being used for three separate dwelling units. Mr. McCann stated that to the best of his knowledge, this dwelling was constructed in 1945. He stated that he did not move into the Groveton area until 1952, but that Mr. Perry who is a next door resident at 3211 Collard Street, constructed his residence in conjunction with Mr. Stegall.

Mr. Hyland asked why this use has suddenly become a problem for citizens in the area when it hasn't been for 35 years. Mr. McCann stated the reason was because of an absentee landlord not living on the property. He stated that there were many problems on Collard Street and he had called the police several times. To the best of his knowledge, Mr. McCann stated, there are four other dwellings on this street operating with separate apartment units.

The next speaker was Oscar Lee Perry of 3301 Collard Street, the next door neighbor. He stated that in 1945 he and Mr. Stegall had helped each other build their homes. When they went to change the building permit to put more rooms upstairs, the Zoning Administrator at that time, Mr. White, said he thought it was a good idea and that it was okay to put stoves and other equipment in these extra rooms. Mr. Perry stated that in 1947 or 1948, Mr. Stegall put an apartment in the basement. Mr. Perry stated that he had rented his second floor for 35 years.

The next speaker was Darcia Morris, a resident of Collard Street since 1943, right across from the property in question. She said that she understood that the Stegalls got a grandfather clause during the war to rent out these rooms. She stated that she didn't think this was a use that could be continued under the grandfather clause. Chairman Smith replied that this was overlooked.

Mr. Hyland stated that assuming there was a non-conforming use here, would it continue to be acceptable for that use upon a subsequent change of ownership of the property. Chairman Smith replied that the answer was yes, but that the use would have had to have been established prior to 1941. He stated that despite the fact that it was permitted by a Zoning Administrator or some official during crisis or emergency situations does not make it a non-conforming use in his opinion.

Mr. DiGiulian stated that he hadn't heard any testimony that indicated there was any consideration given for any crisis period or a need for housing.

Mr. Hyland asked Mrs. Morris who the apartments had been rented to over the years. Mrs. Morris replied that Ft. Belvoir had a listing that they were available. She stated that there were military families living there occaisionally.

The next speaker was Mr. Roger Woodward of 3202 Clayborne Street. He stated that he didn't understand why people were allowed to continue to add more apartments to their residences. Chairman Smith stated that a multiple family use in a single family district is a violation of the existing Zoning Ordinance.

Mr. Yaremchuk stated that the previous speaker indicated there were four other residences operating in this manner on Collard Street. He asked how long they had been rented out. A member of the audience said that they had been rented for many years but it was hard to establish an exact date.

The next speaker was Michael Fanshel, the owner of 3209 Collard Street. He gave his residence address as 3206 18th Street, N.W., Washington, D.C. He stated that he and his wife had lived in the house for about a year and a half and then moved to be closer to work. Mr. Fanshel said he wanted to give a summary of information he had become aware of prior to buying the house, and the information obtained as a result of the complaint. In response to a question from Mr. DiGiulian, Mr. Fanshel stated that he had moved into the house when he bought it and had continued to rent out the rooms as the previous owner had done.

Mr. Yaremchuk asked if Mr. Fanshel had bought the home for investment purposes or a place to live. Mr. Fanshel replied that he had bought it as a place to live. He stated that he thought renting out the apartments would help off-set the cost of living there. Mr. Yaremchuk asked if he would have bought the home if there weren't any apartments. Mr. Fanshel replied no, because he could not have afforded it.

Mr. Fanshel bought to the Boards' attention a sales agreement which indicated there were three units in the dwelling. He stated that he had added into the contract that the owners had to provide proof that this was a legal use. The Stegalls got a letter from Mr. Gilbert Knowlton, assuring them that the two rental units were okay and could be used as long as they weren't changed.

Mr. Fanshel stated that he had taken out a home improvement loan and had improved the appearance of the house cosmetically. In reply to Mrs. Days question, he replied that the loan was collateral as a trust on the house. He stated that the people he rented out the rooms to were carefully screened, well behaved people.

Mr. Fanshel stated that he had purchased the property in September 1979 and had moved to another location in February 1981. Mr. Yaremchuk stated that if Mr. Fanshel still resided at this property, this matter would most likely never have come before the Board. Mr. Hyland stated that only one citizen had a problem with an absentee landlord and not all the citizens that had spoken had expressed that opinion,

Mr. Hyland suggested that at some point during the discussion on this case that the Board Members go into an executive sessions to get input from the County Attorney in regards to actions by County employees in regards to this property.

Mr. Hyland asked Mr. Tom McCann to take a look at the package Mr. Fanshel had presented to the Board. He pointed out the sales contract with the contingency clause that said Mr. Fanshel had to be furnished with proof that this property could be used as a multiple family dwelling. After he was furnished proof from the County in letter form, he bought the property. Mr. Hyland stated that no matter what the decision was today, this matter was not going to end. He stated that this matter would probably end up in litigation. Mr. Hyland asked Mr. McCann if there was any accomodation that the citizens in the community were willing to consider as far as this property, Mr. Perrys' property and others in the area, to restrict this use so they could live with it. Mr. McCann stated that as the President of the Citizens Association, his job had been to bring this to the Board's attention, and the vote had been to submit petitions for the hearing. He stated that before he could make any statement to the Board, it would be necessary to call a meeting of the Groveton Citizen Association. Mr. McCann stated that there had been no complaint about this type of use until they had an absentee landlord.

Mr. Hyland stated that he had no choice to deny the appeal unless it can be shown that the use was existant prior to 1941. He stated that it was a difficult position. Mr. Hyland stated that Mr. Fanshel and his wife had done every conceivable thing to avoid the problem that was now presented to this Board. It wasn't his fault but he is being made to suffer. He stated that that is the reason he was asking the citizens to consider any accomodations, perhaps not at this Board but at some other forum.

Chairman Smith stated that that would be an appropriate approach to the problem. The Board of Supervisors could possibly rezone the district.

//Mr. Yaremchuk made a motion to recess for an executive session. Mr. DiGiulian seconded the motion.

//The meeting reconvened at 1:15 P.M.

Mr. Fanshel was the first speaker. He stated that in some of the information he received from the Zoning Administrator, specifically the 1946-1954 code, it provided the Board the ability to grant special exceptions which included duplex apartments under one roof. It was not until 1959 that the duplexes were excluded from single family areas. It was in 1957 that Mr. Stegall effectively applied for a variance. He stated that the tax records indicate that the property has been classified and paying taxes on the current use. Chairman Smith stated that there was no record of any special exeption ever being applied for on this property. Mr. Fanshel stated that by being able to continue the use all this time, it looked like the county had approved of it. Mr. Fanshel stated that he understood the Board Members were there to consider both sides of the issue and they had the ability to grant an exception in his case. He stated that he thought the Board should consider the law and the equity when making their decision. He stated that he wanted to conform to the laws and had made a reasonable effort to comply. Mr. Fanshel indicated that he thought this was spot zoning since he was the only owner of a duplex to suffer for it, and that it would cause him a great deal of personal hardship and financial damage.

Mr. Yates stated that he had no additional remarks.

Page 325, February 2, 1982
MICHAEL FANSHEL

R E S O L U T I O N (Failed)

Mr.DiGiulian moved that the Board of Zoning Appeals has reached a decision after hearing testimony from the Zoning Administrator and the appellant that this use has existed for over 35 years. That the documentation in the staff report, a letter to Mr. Mooreland who was the Zoning Administrator at that time, in May of 1957; a letter to Mr. Stegall from Mr. Mooreland on August 23, 1957 and a handwritten note at the bottom of that letter, the letter from Mr. Knowlton, Deputy Zoning Administrator of June 4, 1979 stating that the use was declared a non-conforming use, and a letter from Mr. Long, Chief of the Zoning Enforcement Branch dated August 21, 1979, supporting and clarifying the letter from Mr. Knowlton. Mr. DiGiulian moved that the Board overrule the Zoning Administrator and find in favor of the appellant. Mr. Yaremchuk seconded the motion.

Mr. Hyland stated that he felt he had no choice but to uphold the decision of the Zoning Administrator. He stated he would very much like to support the motion but he couldn't. He stated that there had been no better case presented that he had seen before the Board that indicates such unfairness as far as the result. The result occured through no fault of the applicant but through previous interpretations by County employees that treated the property as a non-conforming use. Mr. Hyland stated that the Board of Zoning Appeals did not have the authority to change that law of the Ordinance.

Page 326, February 2, 1982
MICHAEL FANSHEL
(continued)

Mr. DiGiulian stated that for 35 years several Zoning Administrators had given tacit approval for the non-conforming use, and Mr. Knowlton had made a written decision that it was a non-conforming use. If another Zoning Administrator replaces Mr. Yates, he may have another interpretation. He stated that the weight of the evidence shows that everyone up until Mr. Yates considered this a non-conforming use. He stated that this can not be opened to re-interpretation every time somebody has a question about the use.

The motion failed by a vote of 2 - 3 (Messrs. Smith & Hyland and Mrs. Day)

Page 326, February 2, 1982
MICHAEL FANSHEL
(continued)

R E S O L U T I O N

Mr. Hyland made the following motion:

I would ask that the Zoning Administrator coordinate with the County Attorney to approach the Board of Supervisors with a view toward considering the status of the appellants' property and the properties of any other persons in that community which properties contain more than one family. And that the Zoning Administrator request that the Board consider a resolution of the use of those properties which have been utilized for more than one family, in this case, some 35 years. And that the Board consider an amendment to the Ordinance which would concern those properties and which would concern their continued or future use. Second, that we would request the Zoning Administrator not to prosecute a violation of the Ordinance which would result from a decision in this case in connection with this appellant. In other words, to withhold taking any action against this appellant until such time as the Board of Supervisors has at least been contacted and also the Board takes some action or inaction in connection with the request by the Zoning Administrator to address the problem of this property and others similarly situated.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 2 (Messrs. DiGiulian and Yaremchuk)

Page 326, February 2, 1982, Scheduled case of

10:30 A.M. MARVIN D. & JEAN TOOMBS/SEATCO OF ARLINGTON, appl. under Sect. 18-401 of the Ord. to allow automobile oriented use (automative upholstery) with portions of driveways and parking spaces having gravel surface (dustless surface req. by Sect. 11-102), located 5714 Center Ln., 61-2((20))17A, Mason Dist., C-8, 19,039 sq. ft., V-81-M-199. (DEFERRED FROM 12/15/81 FOR NOTICES).

The Chairman stated that he had been informed that the notices were still not in order. The variance application was rescheduled for March 16, 1982 at 10:00 A.M. It was the consensus of the Board to dismiss the application if the notices were not in order for the next hearing date.

Page 326, February 2, 1982, Scheduled case of

10:40 A.M. WILLIAM L. & SUSAN SHALLBETTER, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of existing carport into a garage and storage area 8.1 ft. from a side lot line such that total side yards would be 16.9 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 6438 Alloway Ct., R-3(C), Springfield Dist., 89-1((9))58, 10,255 sq. ft., V-81-S-231.

Mr. William Shallbetter, the applicant, presented his application. Mr. Shallbetter stated that he had overlooked notifying Fairfax County Park Authority, which abuts his property, but that a waiver had been obtained. It was the consensus of the Board to procede with the hearing on the application. Mr. Shallbetter stated that he wanted to enclose his carport and extend it out 11 ft. to make a storage area. He stated that the way the house is situated on the property makes the edge of the addition a little over 8 ft. from the property line. He had no opposition from any of the neighbors concerning this addition. Most of the houses in the subdivision have carports or garages.

There was no one to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-S-231 by WILLIAM L. & SUSAN SHALLBETTER under Sect. 18-401 of the Zoning Ordinance to allow extension and enclosure of existing carport into a garage and storage area 8.1 ft. from a side lot line such that total side yards would be 16.9 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), on property located at 6438 Alloway Court, tax map reference 89-1((9))58, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 10,225 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing building on the subject property, the requested variance is a relatively minor request in terms of the 8.1 ft. being asked for, and there is no objection from any abutting property owners.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 1 (Mr. Smith)

Page 327, February 2, 1982, Recess

At 2:55 P.M. the Board recessed the meeting for lunch.

//
Page 327, February 2, 1982, Scheduled case of

10:50 A.M. ANNANDALE PRE-SCHOOL ASSOCIATION, INC., appl. under Sect. 3-203 of the Ord. to amend SP #14880 for nursery school to permit increase in max. number of children from 60 to 129, located 8410 Little River Trnpk., R-2, Providence Dist., 59-3((1))22, 13,697 acres, S-81-P-090.

The first speaker was Patricia Spaulding of 8604 Cromwell Drive, Springfield, Virginia; President of the Board of the Annandale Pre-School Association. She stated that the school wanted to start a program for two-year olds which would put them over the maximum enrollment that was set at 60 children. The Health Department had indicated the school could have an enrollment of 129 children. The ages of the children would be 2 years through 4 years.

There was no one to speak in support and no one to speak in opposition.

Page 328, February 2, 1982 Board of Zoning Appeals
ANNANDALE PRE-SCHOOL ASSOCIATION

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-P-090 by ANNANDALE PRE-SCHOOL ASSOCIATION under Section 3-203 of the Fairfax County Zoning Ordinance to amend SP #14880 for nursery school to permit increase in max. number of children from 60 to 129, located at 8410 Little River Trnpk., tax map reference 59-3((1))22, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1982; and

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

1. That the applicant is the lessee.
2. The present zoning is R-2.
3. The area of the lot is 13.697 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of children shall be 129.
8. Hours of operation shall be 8:45 A.M. - Noon, 5 days a week during the normal school year.
9. Ages of children shall be 2 years thru 4 years.
10. This is granted for a period of one year provided it's under the same ownership and on the consideration the lease has the option to be renewed.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 5 - 0.

Page 328, February 2, 1982, Scheduled case of

11:10 A.M. JOHN PAUL & MILDRED D. THOMPSON, appl. under Sect. 18-401 of the Ord. to allow enclosure of carport for use as a garage 5 ft. from side lot line such that total side yard would be 15 ft. (8 ft. but a total of 20 ft. min. side yard req. by Sect. 3-307), located 4910 Wakefield Chapel Rd., R-3(C), Annandale Dist., 70-3((5))115, 10,500 sq. ft., V-81-A-232.

The first speaker was Mr. John Thompson, 4910 Wakefield Chapel Road. He stated that he wanted to enclose the carport into a garage to make the house more attractive and for safety

reasons. Mr. Thompson stated that he had owned the property since it had been built in 1964. In response to a question from Mr. DiGiulian, Mr. Thompson stated that there was no other place on the property to locate a garage.

There was no one to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-A-232 by JOHN PAUL & MILDRED D. THOMPSON under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport for use as a garage 5 ft. from side lot line such that total side yard would be 15 ft. (8 ft. but a total of 20 ft. min. side yard req. by Sect. 3-307), on property located at 4910 Wakefield Chapel Road, tax map reference 70-3((5))115, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 10,525 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing building on the subject property, that is, the portion of the structure that's built and enclosed along the rear of the carport would preclude the construction of a garage in any other part of the lot.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 - 1 (Mr. Smith)

Page 329, February 2, 1982, Scheduled case of

11:20 A.M. ARTHUR H. BROWN, appl. under Sect. 18-401 of the Ord. to allow construction of solar energy equipment housing addition to dwelling to 8 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 4034 N. Stuart St., R-2, Dranesville Dist., 31-4((15))78, 13,249 sq. ft., V-81-D-233.

The first speaker was Arthur Brown, the applicant. He stated that this project was a personal attempt to cooporate with the Federal Gov't in its attempt for conservation of energy. He stated that there would be no personal gains. The facility will be built at the side of the house, to house the solar energy equipment. He stated that the solar energy system would

contain pumps to circulate a fluid that runs through heat collectors. He stated that this heat from the sun would be stored in storage tanks. There will be two solar collectors on the roof of the unit, a water storage tank on the inside, a heat exchanger, a circulating pump, switches and relays, control valves and temperature sensors. He stated that this would be a brick construction to match the house and look like an extension of the house. The facility would also include a solar greenhouse termed as a passive system. The greenhouse would serve as a heat collector. Mr. Brown stated he had literature to show the Board put out by the Department of Energy and the Department of HUD which shows how a greenhouse can be built as a lean-to. That is, where as part of the existing building serves as one side of the greenhouse and the glass wall and roof of it is the part that extends from the current wall of the house. In response to a question from Chairman Smith, Mr. Brown stated that an electric fan would be used in the greenhouse and one from the greenhouse into the house for circulation. He stated there would be no noise from these fans.

The next speaker was Mrs. Arax E. Gillcrist, 4030 N. Stuart Street, the applicants next door neighbor. She spoke in opposition. She stated that building this unit would have a great impact on her property. She stated that the solar unit would be able to be seen from her front door. The addition of the silo and the collecting shed would be unattractive. She stated that there was no entrance from the shed into the home. Consequently, this could become just a shed and not a greenhouse. Mrs. Gillcrist said she consulted the real estate agent who had sold her the property, Betty Norris from Caldwell Banker. Ms. Norris came out and viewed the property along with two other real estate agents. Their conclusion was that the addition would have a detrimental effect on the property, because it would give the appearance of a very crowded property.

During rebuttal, Mr. Brown stated that most residential property was built before any energy crisis occurred. There are many houses that could be converted and utilized for the conservation of energy. If we cannot get the County Board to approve these adjustments to construction so as to have the maximum use of energy, then the County in effect is obstructing the policy of the Federal Gov't. Mr. Brown stated that he was willing to make this expenditure to conserve energy.

Mr. Yaremchuk asked the applicant what his hardship was. Mr. Brown replied that the solar collector had to be on the south side of the house. He could not move the addition any further back because of an easement on the back of his property.

R E S O L U T I O N

In Application No. V-81-D-233 by ARTHUR H. BROWN under Section 18-401 of the Zoning Ordinance to allow construction of solar energy equipment housing addition to dwelling to 8 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), on property located at 4034 N. Stuart Street, tax map reference 31-4((15))78, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 13,249 sq. ft.

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

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

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

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 5 - 0.

Page 331, February 2, 1982, Scheduled case of

11:30 A.M. JAMES S. PROHASKA, appl. under Sect. 18-406 of the Ord. to allow 12 ft. high shed to remain 2.5 ft. from side lot line and 4.41 ft. from rear lot line (12 ft. min. side yard and 12 ft. min. rear yard req. by Sects. 3-307 & 10-105), located 5805 Flaxton Pl., R-3, Lee Dist., 82-2((5))(F)33, 11,187 sq. ft., V-81-L-234.

The first speaker was James Steven Prohaska, the applicant, who presented his application. He stated that in August of 1981 his brother, a friend and himself constructed a shed in the rear of the yard. The shed is 12 ft. wide, 12 ft. long, and 12 ft. high with a gabeled roof. The shed is shielded from adjacent properties by trees and shrubs. He stated that he had asked neighbors of their views, and there was no objection. Mr. Prohaska stated that he was not aware of the need for a building permit, because there were several structures of similar height in the neighborhood, within a foot or two of the property line. He stated that he wanted to place the shed in a dry and out-of-the way place. The right side of the rear yard remains wet for extended periods of time. The shed was built and left a natural wood color to blend in with the screening. Therefore, it is not injurous to the use of land and buildings in the vicinity. He stated the best location for his shed was the present location. He stated that moving the shed would be difficult since the empty weight of the shed was 2,000 pounds. It would also require the cutting of a large tree and placement of the shed in an unscreened area which would be in full view of the road and in front of his neighbors large recreation room windows.

The next speaker was Stephen J. Fisher, an adjacent property owner, who spoke in opposition. He stated that when he first became aware of the shed construction, he questioned Mr. Prohaska. He asked him to slide the shed over further. He stated that Mr. Prohaska's lot was higher than his, therefore the shed gave his yard the appearance of being closed in. It also blocked the sun, and diminished the value of his property. The shed is located only 18 feet from the edge of the patio, and 19 feet from the recreation room. He stated that Mr. Prohaska built the shed for his convenience, but did not consider the neighbors' opinion. Mr. Fisher stated that he had talked to Mr. Prohaska about obtaining a building permit, but was ignored, and the construction of the shed continued.

During rebuttal, Mr. Prohaska stated that he had checked with his brother who had built a similar shed a few houses down, and was told he would not be required to obtain a building permit. He stated that the shed is well shielded by trees. He stated that by moving the shed it would put it directly in front of the neighbors recroom window.

Page 331, February 2, 1982 Board of Zoning Appeals
JAMES S. PROHASKA

RESOLUTION

In Application No. V-81-L-234 by JAMES S. PROHASKA under Section 18-406 of the Fairfax County Zoning Ordinance to allow 12 ft. high shed to remain 2.5 ft. from side lot line and 4.41 ft. from rear lot line (12 ft. min. side yard and 12. ft. min. rear yard req. by Sects. 3-307 & 10-105), on property located at 5805 Flaxton Place, tax map reference 82-2((5))(F)33, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. The applicant constructed the structure that is the subject of the application.
2. At the time the structure was being placed at the rear of the property, in its present location, the applicants' neighbors raised a question about it being too close to their property line.
3. There is evidence submitted by the neighbors that, in their opinion, the location of the shed is detrimental to the use and enjoyment of their property.
4. Although there is some indication that the applicant may have been mislead by his brother who constructed a similar structure in 1978, it appears in 1978 a building permit was required for a building in excess of 100 ft. and there were height requirements.

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

Mrs. Day seconded the motion

The motion passed by a vote of 5 - 0.

Page 332, February 2, 1982, Scheduled case of

11:40 A.M. PIERRE RICHARD CHAN-LOK, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 7312 Bath St., R-3, Springfield Dist., 80-3((2))(34)24, 10,720 sq. ft., V-81-S-235.

The Chairman announced that the notices were not in order for this application. It was the consensus of the Board to defer the application to March 16, 1982 at 10:30 A.M.

Page 332, February 2, 1982, scheduled case of

11:50 A.M. ELIZABETH R. JAMESON, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling (over existing patio), to 10.9 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-407), located 2352 Greenwich St., R-4, Dranesville Dist., 40-4((14))(2)37, 10,506 sq. ft., V-81-D-242.

The first speaker was Fred A. Burroughs III, the son-in-law of Elizabeth Jameson. He stated that he was representing the applicant. He stated that the structure is a small cape cod home built in 1940. The request is to enclose the patio for additional living space. There are other similar situations in the neighborhood. The structure will be in keeping with the neighborhood. There has been no objection from any adjoining property owners.

There was no one to speak in support and no one to speak in opposition to the request.

Page 332, February 2, 1982 Board of Zoning Appeals
ELIZABETH R. JAMESON

R E S O L U T I O N

In Application No. V-81-D-242 by ELIZABETH R. JAMESON under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling (over existing patio), to 10.9 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-407), on property located at 2352 Greenwich St., tax map reference 40-4((14))(2)37, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 10,506 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including narrow and substandard in size. It has an unusual condition in the location of the existing building, having two frontages with the patio at the right side, and the construction of enclosing the patio will not enlarge that space closer to the lot line.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

Page 333, February 2, 1982, Scheduled case of

12:00 NOON JOHN M. & PRISCILLA C. LARUSSO, appl. under Sect. 18-401 of the Ord. to allow construction of a sunroom addition to dwelling to 17 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 8237 Crown Court Rd., R-3, Mt. Vernon Dist., 102-3((20))32, 10,943 sq. ft., V-81-V-243.

The first speaker was Van Reames, 2584 Plum Tree Court, Vienna, Virginia, who represented the applicants. He stated that the applicants wished to construct a 10' x 10' sunroom on an existing concrete slab in their backyard. The lot is small and irregular in size.The lot is trapezoidal. There is no other place on the lot the sunroom could be placed for it to be functional and pleasing to the property. Mr. Reames stated that the shed would be sliding glass and screen, with an aluminum insulated roof.

There was no one to speak in support and no one to speak in opposition to the application.

Page 333, February 2, 1982 Board of Zoning Appeals
JOHN M. & PRISCILLA C. LARUSSO

R E S O L U T I O N

In Application No. V-81-V-243 by JOHN M. & PRISCILLA C. LARUSSO under Section 18-401 of the Zoning Ordinance to allow construction of a sunroom addition to dwelling to 17 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), on property located at 8237 Crown Court Road, tax map reference 102-3((20))32, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,943 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, the house is set back more from the property lines because of topographic problems, and it has an unusual condition of the location of the existing buildings.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

Page 334, February 2, 1982, Scheduled case of

12:10 P.M. FATHY E. ABOUZIED, appl. under Sect. 3-103 of the Ord. for a home professional office (accounting, bookkeeping, & tax services), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., S-82-A-001.

12:30 P.M. FATHY E. ABOUZIED, appl. under Sect. 18-401 of the Ord. to allow gravel driveway and parking spaces in conjunction with a home professional office (dustless surface req. by Sect. 11-102), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., V-82-A-001.

Chairman Smith indicated that the applicant had requested a deferral. It was the consensus of the Board to defer the above cases to March 16, 1982, at 10:10 A.M. and 10:20 A.M. respectively.

Page 334, February 2, 1982, Scheduled case of

12:45 P.M. FIRST ASSEMBLY OF GOD, appl. under Sect. 3-303 of the Ord. for construction and operation of a church and related facilities, located 5225 Backlick Rd., 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-078. (DEFERRED FROM 11/17/81 & 12/8/81 FOR NOTICES AND FROM 1/5/82 FOR LACK OF A QUORUM)

The first speaker was Wendel Cover, the pastor of First Assembly of God. He stated that the application was for an auditorium to seat 600 people. He stated that the parking was adequate and would not need to be changed.

The next speaker was Larry Francis, a member of the Edsall Park Civic Association. He stated that the Civic Association did not oppose the development of the lot for church use, however the citizens were concerned about future expansion. The other concern was that the church preserve as much of the screening as possible. Mr. Yaremchuk stated that the County Arborist was the one that gave final approval to a site plan and he would be the one to speak to. Mr. Francis stated that the other major concern was the potential of health hazards from the holding pond.

There was no one else to speak in support and no one to speak in opposition.

Page 334, February 2, 1982 Board of Zoning Appeals
FIRST ASSEMBLY OF GOD

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-A-078 by FIRST ASSEMBLY OF GOD under Section 3-303 of the Fairfax County Zoning Ordinance for construction and operation of a church and related facilities, located at 5225 Backlick Road, tax map reference 71-4((1))40, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1982; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 14.90335 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The proposed sanctuary shall have a seating capacity of 600.
8. The hours of operation shall be those of normal church activities.
9. The number of parking spaces shall be 157.
10. The existing sanctuary may be utilized as a gymnasium when the new sanctuary is completed.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. DiGiulian being absent)

Page 335, February 2, 1982, Scheduled case of

1:00 P.M. ANNANDALE-SPRINGFIELD CHRISTIAN ACADEMY, appl. under Sect. 3-303 of the Ord. for a private school of general education, and child care center, located 5225 Backlick Rd., 71-4((1))40, Annandale Dist., R-3, 14.90335 acres, S-81-A-079. (DEFERRED FROM 11/7/81 & 12/8/81 FOR NOTICES AND FROM 1/5/82 FOR LACK OF A QUORUM)

The first speaker was Wendel Cover, the pastor of the First Assembly of God church. He stated that the proposed school and child care would be operated from 7:00 A.M. to 6:00 P.M. The school is for a maximum of 300 students. He stated that the facility would serve the Springfield, Burke, Annandale and Alexandria areas. The proposed structure would be constructed with brick and block, with a brick facade.

There was no one to speak in support and no one to speak in opposition to the request.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-A-079 by ANNANDALE-SPRINGFIELD CHRISTIAN ACADEMY under Section 3-303 of the Fairfax County Zoning Ordinance for a private school of general education, and child care center, located at 5225 Backlick Road, tax map reference 71-4((1))40, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1982; and

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

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 14.90335 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

336

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 300.
8. The hours of operation shall be 7:00 A.M. to 6:00 P.M. five days a week, Monday thru Friday.
9. Parking will be adequate as it's on the church property.
10. The ages shall be 2 years thru senior high.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. DiGiulian being absent)

Page 336, February 2, 1982, After Agenda Items

Buffalo Hills Citizens Association (A-81-M-014) - The Board was in receipt of a letter from the Board of Supervisors requesting a deferral of A-81-M-014. The public hearing was currently scheduled for February 9, 1982, and the Supervisors were requesting a deferral to March 9, 1982. It was the consensus of the Board to issue their intent to defer the appeal application, and they would do it formally at the scheduled time of the case.

//

Page 336, February 2, 1983, After Agenda Items

Jube B. Shiver, Sr. - On January 12, 1982, the Board granted a variance to Mr. Shiver to allow a subdivision into four lots. At some time prior to the hearing, amended plats indicating five lots were substituted in the folder. The discrepancy was not noticed at the time of the public hearing and the Board signed off on the amended plat. Since this new subdivision was never advertised properly, it was the consensus of the Board that Mr. Shiver would have to go through a public hearing process to obtain a variance for this new application.

// There being no further business, the Board adjourned at 6:30 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith
DANIEL SMITH, CHAIRMAN

Submitted to the Board on Aug. 28, 1983

APPROVED: Sept. 6, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 9, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:55 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. BUFFALO HILLS CITIZENS ASSOCIATION, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that, as of November 17, 1981, the activities of Bethany House of Northern Virginia, Inc., at 3014 Castle Road, did not constitute a Group Residential Facility as defined by the Zoning Ordinance, R-3, Mason Dist., 51-3((13))44 & pt. 45, 26,457 sq. ft., A-81-M-014.

The Board of Zoning Appeals was in receipt of a memorandum from J. Hamilton Lambert, County Executive, notifying them of the Board of Supervisors' action requesting the BZA to defer its hearing on this matter until March 9, 1982 so that the Shelter for Battered Spouses could work out other arrangements. In addition, the Clerk notified the BZA that the required notices were not in order.

Mr. Yaremchuk moved that the Board defer the appeal until March 9, 1982 at 10:40 A.M. Mr. DiGiulian seconded the motion and it passed by a vote of 5 to 0.

//

Page 337, February 9, 1982, Scheduled case of

10:30 A.M. CARL G. & MARIAN J. KRAJEC, appl. under Sect. 18-401 of the Ord. to allow shed addition to building to remain 9.7 ft. from the edge of pipestem (25 ft. min. front yard req. by Sect. 2-416), located 2624 Black Fir Ct., R-2(C), Centreville Dist., 26-3((10))198, 20,977 sq. ft., V-81-C-236.

Mr. Carl Krajec of 2624 Black Fir Court in Reston informed the Board that he was requesting a variance for a utility shed to remain 9.7 ft. from the edge of the pipestem. Mr. Krajec stated that the previous fall, quite a bit of his patio furniture was left out in the weather. He stated that he had moved here the previous year. His wife had some medical bills and they had some additional pressure to do something to store the equipment. Mr. Krajec stated that his wife made two trips out to the County to obtain a building permit. The first time, she arrived too late and the other time the forms were not correct. Mr. Krajec stated that he called the Building Office up and found out that he had enough space to meet the Zoning Ordinance requirements. Mr. Krajec stated that he even talked to another individual to verify the records that he had enough space to build the shed. Mr. Krajec stated that he was not aware of the rezoning in May of 1980 which changed his plat.

Mr. Krajec stated that he as notified by Bill Shoup that he was in violation. Mr. Shoup had found the existence of a pipestem on his neighbor's lot. Mr. Krajec stated that he had support from all of his neighbors and that a few of them had come to the public hearing.

Chairman Smith stated that if the shed was constructed by right prior to the change in the Ordinance, there was no problem with the solar panel. The problem was the addition Mr. Krajec had made without the proper permits. Mr. Yaremchuk inquired if this came under the mistake clause. Mr. Hyland stated that Mr. Krajec had contacted the County and there was no problem with building the shed. He had even indicated the name of the individual he had spoken with. Mr. Yaremchuk stated that the lot would not permit the shed to be located at this spot. Mr. DiGiulian stated that the applicant had used the plat that was on file with the County that did not show the pipestem next door. Mr. Krajec stated that was what had happened. He stated that he purchased the property on July 20, 1981. The plat did not reflect the pipestem. Mr. Covington stated that there was a plat submitted with the building permit application. Mr. Krajec stated that the one or two attempts to get a building permit had failed. Since he met the Zoning Ordinance requirements, the only requirement was that he get a permit. Mr. Krajec stated that he was planning on doing that. He did not feel that he had violated any Ordinance at that time. Then Mr. Shoup showed up and notified him that he had violated the setback from the adjoining pipestem.

Mr. Yaremchuk stated that the pipestems were 10 ft. for each of the lots. There was 34 ft. for a driveway. Mr. Yaremchuk stated that he could not see setting back from the driveway. Mr. DiGiulian inquired if Mr. Krajec's fence was adjacent to the pipestem on the property line and was informed it was. Mr. DiGiulian inquired as to the distance of the fence from the driveway. Mr. Krajec stated that there was only a few feet. The neighbor on the other side did not have any objection to the construction of the shed.

Chairman Smith inquired if the Code required an addition to the existing dwelling to have the footings inspected. Mr. Covington stated that it did. Chairman Smith stated that the method of obtaining a building permit after the construction was under way was not the way the Ord.

338

was designed to operate. Chairman Smith stated that he did not know how the County would inspect the footings. He stated that this was a new subdivision and inquired if Mr. Krajec was the original owner. Mr. Krajec responded that he was the second owner. The house was built in 1977. Mr. Hyland inquired as to what the shed was sitting on and was informed it was on concrete. Mr. Krajec stated that there was 2 ft. around the foundation. The slab was about 6". Mr. Krajec stated that he had submitted all of that information with his variance.

The following persons spoke in support of the application. Mr. Graham Folgum of 2618 Black Fir Court stated that he was the owner of lot 195 down from Mr. Krajec. Mr. Folgum added his support as he did not object to the addition. He felt it was complimentary and did not detract from the entrance of the pipestem. The pipestem was asphalt so there was a border there. Mr. Folgum stated that there was about 8 ft. of buffer between the pipestem and the property line.

Mrs. Mavis Dodson of 2616 Black Fir Court, owner of lot 194, also spoke in support of the variance. She did not find the shed to be offensive as it added to the looks of the property. Mrs. Dodson stated that she did not object and she lived right next door.

There was no one else to speak in support and no one to speak in opposition.

Page 338, February 9, 1982 Board of Zoning Appeals
CARL G. & MARIAN J. KRAJEC

R E S O L U T I O N

In Application No. V-81-C-236 by CARL G. & MARIAN J. KRAJEC under Section 18-401 of the Zoning Ordinance to allow shed addition to building to remain 9.7 ft. from the edge of pipestem (25 ft. minimum front yard required by Sect. 2-416) on property located at 2624 Black Fir Court, tax map reference 26-3((10))198, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject proper ty is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 20,977 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property. This location is the most feasible place that the shed could be constructed as anywhere else would also require a variance.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 339, February 9, 1982, Scheduled case of

10:40 A.M. FRANKLIN & JEWELL STANDIFER, appl. under Sect. 18-401 of the Ord. to allow construction of deck additions to dwelling, one at ground level, the other at first floor level, both of which would be 13 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 11317 Hunt Farm Ln., R-1(C), Centreville Dist., 36-4((16))41, 20,385 sq. ft., V-81-C-241.

339

Mr. Standifer of 11317 Hunt Farm Lane in Oakton explained to the BZA that due to the position of his house on his lot he had a very small back yard. The back yard sloped. He stated that he had a small patio only 7 ft. wide. Mr. Standifer stated that he did not have full use of his back yard. Therefore, he wanted to build a deck. Mr. Standifer stated that the closest house was about 100 yards and was in a wooded area. By building the deck, it would not infringe on the other property in any way.

Chairman Smith inquired as to the hardship as defined by the Ordinance. Mr. Standifer stated that the Ordinance stated that he must not be closer than 19 ft. and his deck would be 13 ft. There was no one else to speak in support of the application.

Mr. Lawrence Bruther of 11424 Vale Springs Drive spoke in opposition. He stated that he owned parcel A and was in opposition to the variance because it would infringe on his privacy. Mr. Bruther stated that the area was zoned R-1 which was one house per acre. There was a development plan that would allow a house on less than an acre and it was called a cluster subdivision. Mr. Bruther stated that the builder had the houses on less than ½ acre and had pushed them as far back as he could. Mr. Bruther stated that the builder had totally denuded the land of any trees. There was not any cushion or border. Mr. Bruther stated that the builder could have used some of the open space as a border. Instead, all of the open space was in the center of the subdivision. There was nothing left as a buffer. Mr. Bruther stated that Mr. Standifer's lot did slope downward. The house was elevated down towards his home. Mr. Bruther stated that the distance between dwellings was more like than 100 ft. than 100 yards. Mr. Bruther informed the Board that the deck was two level. One was on the ground floor and the other was on the upper level. The deck would overlook the 6 ft. stockade fence and would infringe on Mr. Bruther's privacy. Mr. Bruther stated that if the Standifers wanted a deck that big, they could have bought a house with a deck on the side. Mr. Bruther did not feel that the deck belonged on the property line as it would not be in keeping with the design or character of the area. Mr. Bruther stated that he did have some trees in the back but he might want to remove them in the future. Mr. Bruther stated that the deck was very high in relation to the 6 ft. fence. There was not any back yard for Mr. Standifer but to allow the deck would be compromising Mr. Bruther. It would not be in keeping with the integrity of the neighborhood.

In response to questions from the Board, Mr. Bruther stated that it compromised his property by lowering the value of the property. In addition, it would place the Standifers right on top of him. Mr. Bruther showed the Board photographs of his property and the woods on his property. He stated that his house was only 100 ft. from the Standifers' house.

There was no one else to speak in opposition. During rebuttal, Mr. Standifer submitted photos to the Board and stated that he felt it was more like 100 yards between the two dwellings. Chairman Smith stated that Mr. Standifer had to justify the variance under the Ordinance. Mr. Yaremchuk stated that Mr. Standifer's house was close to the property line. Chairman Smith replied that the applicant had purchased the property in that manner and was aware of the restrictions or should have been when he bought it. Mr. Yaremchuk stated that not everyone was perfect and people do make mistakes. Mr. Hyland inquired as to how high the deck would be. Mr. Standifer showed the Board a picture of the first level of the deck which would be at the kitchen window. Mrs. Day inquired if there was any sliding glass doors at the present time and was informed there would be. Mr. Standifer stated that he had one more thing to say. Mr. Bruther had indicated that the Standifers would be imposing on his privacy. Mr. Standifer stated that Mr. Bruther had called his house and was all upset with the builder. They had informed him that the builder was not building the deck. Mr. Bruther had informed Mr. Standifer that he could barely see the house from his house. Therefore, Mr. Standifer felt that Mr. Bruther's statement that the Standifers were invading his privacy was quite inaccurate.

A woman from the audience attempted to say something but was informed by the Chairman that she was out of order. Mr. Hyland questioned Mr. Bruther about the photographs submitted by the applicant. One photo was taken from Mr. Standifer's kitchen window and it showed the view that would be from the upper level of the deck. Mr. Hyland informed Mr. Bruther that in looking at the photos, he had some difficulty in locating his house. There was screening there. Mr. Hyland inquired if Mr. Bruther had any plans to put in a pool or something would be in view of the upper deck. Mr. Bruther stated that he had considered a pool or a tennis court. Mr. Hyland stated that at present, the Standifers could see the same thing from their kitchen window. Mr. Bruther replied that when the Standifers were on the deck, they would be there for longer periods of time. Mr. Hyland stated that from the standpoint of privacy, the deck would not change the view of the property. Mr. Bruther stated that the deck would be closer. There was a fence there. Mr. Bruther stated that if he was out in his back yard, the Standifers would be right on top of him. Mr. Hyland stated that there was some screening at present between the two dwellings and Mr. Bruther had some difficulty in seeing the Standifers house. Mr. Bruther stated that when the trees were in bloom, he had difficulty. However, the leaves were only on from June to September.

RESOLUTION

340

In Application No. V-81-C-241 by FRANKLIN & JEWELL STANDIFER under Section 18-401 of the Zoning Ordinance to allow construction of deck additions to dwelling, one at ground level, the other at first floor level, both of which would be 13 ft. from rear lot line (19 ft. min. rear yard required by Sects. 3-107 & 2-412) on property located at 11317 Hunt Farm Lane, tax map reference 36-4((16))41, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 20,385 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property as the dwelling is situated to the extreme rear of the lot; and it appears that there is no other place to put the deck except at the rear. Notwithstanding the objection of the neighbor, the property is well screened and it does not appear that the privacy would be altered substantially from the situation as it now exists with the applicant being able to look out his kitchen window onto the neighbor's property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 340, February 9, 1982, Scheduled case of

10:50 A.M. OWEN F. RADKE, appl. under Sect. 18-401 of the Ord. to allow construction of garage/family room addition to dwelling to 13.5 ft. from side lot line such that total side yards would be 25.7 ft. (12 ft. min. but 40 ft. total min. side yard req. by Sect. 3-107), located 12507 Northern Valley Ct., R-1(C), Centreville Dist., 35-4((2))18, 29,166 sq. ft., V-81-C-237.

Mr. Radke of 12507 Northern Valley Court informed the Board that he wished to build a garage that would come within 13.5 ft. of the side lot line. The total yard area would be 25.7 ft. Mr. Radke stated that he needed a variance to the overall side yard requirement of 40 ft. The reason that he wanted to build the garage was that he had saved for many years to build the house. It had everything they wanted but a garage. Mr. Radke stated that the real estate agent had assured him that the garage could be built. It was afterwards that he had discovered that he needed a variance. Mr. Radke stated that he did not want to add the family room and the garage to the end of the house as the existing house was already 52 ft. long and it would make the house very long. He stated that the proposed addition would be an L-shape and would have a better appearance.

In response to questions from the Board, Mr. Radke stated that he had owned the property since October of 1981. Mr. Yaremchuk stated that the Board needed some justification for a hardship. Mr. Radke stated that there was no other place to build the addition as his property had a very steep slope to the side. The only way to build the garage would be to have a detached garage and that would have to be in the front yard. Mr. Radke stated that his property was triangular shaped. The house was situated at an angle to the lot. One

corner came about 12 ft. to the lot line. Mrs. Day inquired as to what located on lot 14 as it was a very long lot and she asked if it were developed. Mr. Radke stated that it was not developed. The owner had subdivided that parcel into two lots. The people who bought the subdivision lots did not have any objection to Mr. Radke's variance. Mrs. Day inquired as to the width of the proposed garage and was informed it would be 20 ft. It would be a very small two car garage. Mrs. Day asked Mr. Radke if he had a basement in his house. Mr. Radke stated that he did. The only alteration would be to add a driveway in front of the house and convert part of the basement into a garage. Mr. Hyland inquired as to the location of the septic field as it was not shown on the plat. Mr. Radke pointed out the location on the plat. Chairman Smith stated that it should have been indicated on the plats as the BZA needed to address whether the property was on public water and sewer.

There was no one else to speak in support and no one to speak in opposition.

Page 341, February 9, 1982 Board of Zoning Appeals
OWEN F. RADKE

RESOLUTION

In Application No. V-81-C-237 by OWEN F. RADKE under Section 18-401 of the Zoning Ordinance to allow construction of garage/family room addition to dwelling to 13.5 ft. from side lot line such that total side yards would be 25.7 ft. (12 ft. minimum but 40 ft. total minimum side yard required by Sect. 3-107) on property located at 12507 Northern Valley Court, tax map reference 35-4((2))18, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 29,166 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including narrow, shallow and pie-shaped and has exceptional topographic problems and has an unusual condition in the location of the existing buildings on the subject property. The property is served by public water and septic system which makes it difficult to locate the garage elsewhere on the property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 341, February 9, 1982, Executive Session

At 11:45 A.M., Mr. Hyland moved that the Board of Zoning Appeals go into an Executive Session to discuss legal latters in connection with a case the BZA had heard the previous week. Mr. DiGiulian seconded the motion. The vote on the motion passed by a vote of 5 to 0. Chairman Smith suggested that while the Board was in Executive Session, that they have lunch and return at approximately 12:45 to continue with the schedule agenda. The Board of Zoning Appeals reconvened the meeting at 1:00 P.M. to continue with the scheduled agenda.

//

Page 342, February 9, 1982, Scheduled case of

11:00 A.M. CHARLES F. LETSCHE, appl. under Sect. 18-401 of the Ord. to allow construction of a two-car garage addition to dwelling to 13.9 ft. from a street line on a corner lot (20 ft. min. front yard req. by Sect. 3-307), located 13203 Pennerview Ln., R-3(C), Springfield Dist., 45-3((2))(21)11, 13,082 sq. ft., V-81-S-238.

342

Mr. Charles Letsche of 13203 Pennerview Lane in Fairfax informed the Board that his family needed more space as they were now approaching teenage levels. They wanted to convert the one car garage into a family room to possibly keep the family at home during the teenage years. Mr. Letsche stated that his lot was a corner lot and had a 20 ft. front yard requirement on two sides. Mr. Letsche stated that there were two easements at the back which limited any construction in that direction. Upon speaking with his neighbors, five had seen fit to support the variance with a letter for Mr. Letsche to present to the Board.

Chairman Smith inquired as to why the plat did not show the easements to the rear. Mr. Letsche replied that his engineer had indicated that it was not germane. He stated that his surveyor was Mr. Bartlett. Chairman Smith stated that all easements, buildings and structures should be shown on the plat. Mr. DiGiulian questioned the 20 ft. front setback from a street and Mr. Covington stated that it was a cluster subdivision. Mr. Letsche informed the Board that he was a permanent resident and had been for six years. This would be his permanent home. He stated that his neighbors did not object and supported his efforts.

Mr. Hyland passed the photos around to the rest of the Board members. He questioned the fact that Mr. Letsche wanted to convert his present garage into a family room and hobby shop and build another garage. Mr. Letsche stated that the proposed garage would be 33.9 ft. and that a variance of 6 ft. was necessary. Mr. Hyland inquired if the proposed garage would be a two car facility and was informed it would be. Chairman Smith stated that the applicant had an existing garage. Mr. DiGiulian inquired if it was possible to keep the present garage and build the playroom to the back of the house. Mr. Letsche stated that was impossible as he would be over a power line. The two car garage would give him 400 sq. ft. of space. Mr. DiGiulian suggested that the applicant only build 16 ft. out from the rear of the house. Mr. Letsche stated that he had attempted to build a pool at that location but was not able to because of the power line. Mr. Letsche stated that it would cost $2,000 to move the power lines. Mr. Yaremchuk stated that he felt they were just trying to discourage Mr. Letsche from building there. He stated that he could encroach and build on the easement. Mr. Yaremchuk inquired as to the distance of the poles from the house. Mr. Letsche stated that the poles were almost on the back property line. The easement went across one corner of the lot and was a perpetual easement. Mr. Yaremchuk stated that the applicant should have spoken with an attorney. Mr. Letsche stated that he had tried the alternative instead. Mr. Letsche stated that he preferred the garage where he was presently proposing it. Mr. Hyland inquired as to why the easement was not recorded on the plat. Mr. DiGiulian stated that the plat used by the applicant was the one used for final occupancy.

Page 342, February 9, 1982 Board of Zoning Appeals
CHARLES F. LETSCHE

RESOLUTION

In Application No. V-81-S-238 by CHARLES F. LETSCHE under Section 18-401 of the Zoning Ordinance to allow construction of a two-car garage addition to dwelling to 13.9 ft. from a street line on a corner lot (20 ft. min. front yard required by Sect. 3-307) on property located at 13202 Pennerview Lane, tax map reference 45-3((2))(21)11, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 13,082 sq. ft.
4. That the applicant's property is a small corner lot having double front yard requirements and the existence of an easement in the rear yard would preclude construction at the rear.

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

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

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

RESOLUTION

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 2 (Messrs. Smith and Hyland).

Page 343, February 9, 1982, Scheduled case of

11:10 A.M. ROBERT J. & JUDITH C. LEWIS, appl. under Sect. 18-401 of the Ord. to allow subdivision into 6 lots with proposed lots 2, 3 & 4 having width of 6 ft. each (150 ft. min. lot width req. by Sect. 3-106), located 7525 Old Dominion Dr., R-1, Dranesville Dist., 21-3((1))34, 7.24 acres, V-81-D-239.

Mr. Howell Simmons of Paciulli, Simmons & Associates in Vienna represented the applicant. He presented the Board with some drawings that would better illustrate his discussion of the requested variance. Mr. Simmons informed the Board that the request was for a subdivision with three lots having less than the required street frontage. The property was exceptionally steep. Another characteristic was the number of trees and shrubbery on the site. There was Oak, Holly, Mountain Laurel and evergreens. Mr. Simmons stated that the development would be in keeping with the general character of the area. Mr. Simmons stated that the hardship was the construction of the street that would take away the existing trees and shrubbery. In addition, due to the steep slopes, it would be almost impossible to build a street through the property. Mr. Yaremchuk inquired if the applicant was to build a street in accordance with Subdivision Control standards, what kind of granding would be there. Mr. Paciulli stated that there would be a 2% grading. He stated that he would have to have a landing goind up over the street and a 10% grade. Mr. Yaremchuk inquired about the cut on the slope. Mr. Simmons stated that at the steepest area, there would be about a 14 ft. cut. Mr. Yaremchuk inquired if that would present a problem as far as erosion. Mr. Simmons stated that it could be handled. Mr. Yaremchuk inquired if the ditches would have to be paved. Mr. Simmons stated that he had not gone into it that much. He stated that you would normally have to pave it at about 4 cu. ft. of water.

Mr. Robert Lewis spoke in support of the application. He informed the Board that he was a civil engineer and this was his home. He stated that he was moving into his house this week. Mr. Lewis stated that this was not a situation of trying to get the most out of the land. He stated that he had the property under contract for over a year. He had settled on it last May. Mr. Lewis stated that he had walked the property and located trees. He was attempting to find the best way to preserve the landscape. Mr. Lewis stated that he had bought the house from the outside. He had four children. Mr. Lewis stated that he had done so many decorative aspects to the inside. He wanted to preserve the area. Mr. Lewis stated that this was his best effort and it was likely that he would not have to cut down any trees.

Mr. Yaremchuk inquired if this was the best method or the most economical. Mr. Lewis stated that he had already spent $25,000 in plans. Mr. Yaremchuk inquired if the cul-de-sac could be constructed for $25,000. Mr. Lewis stated that the water and sewer would be the same. The only difference would be in the grading and the saving of the trees. Mr. Lewis informed the Board that he had five letters of support regarding his request.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-81-D-239 by ROBERT J. & JUDITH C. LEWIS under Section 18-401 of the Zoning Ordinance to allow subdivision into 6 lots with proposed lots 2, 3 & 4 having width of 6 ft. each (150 ft. minimum lot width required by Sect. 3-106) on property located at 7525 Old Dominion Drive, tax map reference 21-3((1))34, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 7.24 acres.
4. That the applicant's property has exceptional topographic problems and the subdivision plan has been designed to preserve as many large trees as possible.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 344, February 9, 1982, Scheduled case of

11:20 A.M. E & Z LIMITED PARTNERSHIP, appl. under Sect. 18-401 of the Ord. to allow a sign for five (5) individual enterprises within shopping center, to be erected on existing facia at arcade entrance, located 8365 Leesburg Pike, C-7, Centreville Dist., 29-3((1))36, 36A, 36B, 36C & 36D, 9.3059 acres, V-81-C-240.

As the required notices were not in order, the Board deferred the variance until March 15, 1982.

//

Page 344, February 9, 1982, Scheduled case of

11:30 A.M. SOUTH FORK SWIM & RACQUET CLUB, INC., appl. under Sect. 3-103 of the Ord. for a community swimming and tennis club, located 3025-A Fox Mill Rd., R-1, Centreville Dist., 36-4 ((17))pt. B1 & 36-4((20))pts. 1 & 2, 3.609 acres, S-81-C-088.

Mr. Ralph Dahl, President of the South Fork Swim & Racquet Club, was informed by Chairman Smith that the Board would hear the case. However, in view of some of the information, Chairman Smith stated that the Board might want to defer any action until it got new plats. Chairman Smith stated that there were four points outlined in a memorandum from Mr. Jones of the Health Department that should be incorporated into the plats, particularly with respect to the septic field. Mrs. Day questioned the acreage shown on the agenda as it did not conform with the acreage shown on the plat. Mr. Dahl stated that the site was located 1500 ft. from the intersection of Fox Mill Road and Stuart Mill Road in the Navy Vale area. Access was obtained by the roads of the Ashton development. Mr. Dahl stated that Ashton was five acres plus lots. The recreational facility was developed to accommodate up to 500 families but there were restrictions in the by-laws to limit it to 450 familes. Mr. Dahl stated that they had to provide membership to each of the families in Stuart Mill Woods. He stated that the use rate would be about 400. The facility was designed to have a competition size swimming pool so as to accommodate swimming teams. There would be a club house with a shower and four tennis courts and parking facilities for the membership.

Mr. Dahl explained to the Board that he wanted to break the presentation down and have several people come forward with engineering aspects and the need for the area and the attempts to work with the local residents.

Mrs. Pat Kosher of 2721 Clarks Landing Drive in Oakton informed the Board that she had been a member of a group of several committees who requested the Fairfax County Park Authority to provide a recreational facility. She stated that the Park Authority did not have funds for such a facility and denied their request. They suggested that the committees look for private land. She stated that they could not afford $40,000 and had looked for common land. Of the six properties they had looked at, two had streams, one had a pond that did not perc, one had access from a major thoroughfare but Stuart Mill Woods had an area large enough. The residents were willing to lease the land for a community facility. Mrs. Kosher informed the Board of all the other pools in the nearby area and their distances. Mrs. Kosher stated

that all of their members came from within a two mile radius of the proposed facility. All persons who wished to become members were in favor of the application. Mrs. Kosher stated that they had circulated a petition within the 2 mile radius and 937 persons had signed the petition in support which represented 607 families. Mrs. Kosher informed the Board that there was support for the facility.

Mr. Hyland questioned the signatures of the 937 people since the facility would be limited to 500 families and inquired if that meant some of the persons would not be allowed to join. Mrs. Kosher stated that the facility's membership would be handled on a first come, first served basis. Mr. Hyland inquired as to the number of families who had indicated their interest by paying a deposit to join the club. Mrs. Kosher replied that 68 families in Stuart Mill Woods had paid a deposit, 7 families in Oakton and 150 other families. She stated that some families had already paid the full membership fee. Mrs. Kosher stated that she did not know the total number of families in the 2 mile radius.

Mrs. Day inquired as to the total number of parking spaces provided on the plan and was informed there would be 73 parking spaces. Mrs. Kosher stated that the Code required 45 spaces. She stated that 450 families including Stuart Mill Woods would be within walking distance of the facility.

Mr. Ray Smith of 2112 Twin Mill Lane also spoke in support of the application. Mr. Smith stated that he was asked to speak about some engineering concerns that had come up both from the Health Department and the environmentalists and the neighbors. Mr. Smith stated that the club recognized the concerns of all three parties and felt that they could deal with them. Basically, there were four concerns: storm water runoff into Difficult Run; runoff of the treated swimming pool water backwash; adequacy of the fresh water supply; and the affects of the wells on the surrounding neighbors and the septic fields. Mr. Smith stated that there was a report from Holland Engineering which addressed the question of the adequacy of the soils and the drainage. Mr. Smith stated that it was underlined in the report. Mr. Hyland inquired if the people in opposition had received a copy of the report. Mr. Smith stated that there had been a lot of scurrying around had been going on as more and more things had been pulled out of the woodwork on the application. He stated that the common area of Stuart Mill Woods was also available to them and there was two acres that had passed perc. Therefore, they did not feel the 50% reserve area required by the Health Department was a problem. He stated that Mr. Jones and the Soil Scientist had gone out to recheck the site because of the concerns of the citizens. Mr. Holland had signed his letter that there would be zero runoff.

With regard to the pool water backwash, Mr. Smith stated that it had been recommended that the pool have a cartlidge filter which would eliminate the backwash and any possible runoff. During the winter, the pool was proposing to truck the water away. Mr. Smith stated that the 600 families who had signed up in support of the application had all moved to Oakton because they wanted that type of lifestyle. Mr. Smith stated that he did not want to do anything to the environment. Mr. Smith stated that there were 80 lots in Ashton. If every owner built a pool, there would not be any controls and every pool would drain into Difficult Run. Mr. Smith stated that 80 pools with no controls would be more of a problem. Mr. Smith stated that the citizns wanted a common facility and that a community pool would be a focal point.

With respect to the adequacy of the fresh water supply and the effect on the wells in the area, Mr. Smith stated that the pool would not have a negative impact. In summary, Mr. Smith stated that the club was prepared to meet all of the County requirements. There would not be a negative impact on the area. If the pool did not go in, dozens more private pools would go in that would not be in control of the County. Mr. Smith stated that a lot of issues raised were issues that would be dealt with at the site plan stage. He stated that he was not quite prepared to deal with these issues at this point.

Mr. Hyland stated that he was in receipt of the Planning Commission report and it was clear to him that there must have been an equal number of citizens in opposition at that public hearing who were concerned about the environmental issue. Mr. Hyland stated that Mr. Smith had suggested that the environmental impact could be taken of with no problem. Mr. Hyland asked what concerns had been expressed and how was the club going to take care of them. Another issue had been traffic in the neighborhood and Mr. Hyland asked how the club would take of that. Mr. Smith responded that the main environmental concern was that this was a rural area and was not susceptible to intense development. In addition Brook Trout had been found in South Fork and in Difficult Run. Basically, Mr. Smith stated that it was not fair to say that it was not a problem but it was something that could be dealt with at considerable expense. Mr. Smith stated that the club was not sluffing off the problem and intended to deal with them. Mr. Smith stated that all of the lots were split by the South Fork. There were five acre lots with horses, pools, etc.

With respect to the transportation, Mr. Smith stated that they had been told transportation looked at the site and indicated that there would not be a problem with it. Mr. Smith stated that the facility would only be used three months a year and the other nine months, there would not be any impact at all. Mr. Smith stated that the swimming team would use the facility in the early morning. Mr. Hyland inquired as to why the club wanted lights. Mr. Smith responded that Pinecrest had lights. They had a pool and three tennis courts.

Mrs. Lynn Letner, Director of the Homeowners Association in Stuart Mill Woods was the next speaker in support of the application. She stated that the club had visited all of the neighbors and due to the concerns of Mr. and Mrs. Hylton and Mr. and Mrs. Brotoun, the club would move the pool and redesign the tennis courts. She informed the Board that should the special permit be approved, the club would work with the neighbors as much as possible.

The next speaker was Mr. James Past of Freehill Road in Stuart Mill Woods. He informed the Board that the major concern of the citizens had been the environmental impact. In looking over the code, there was no adopted provision to be used as a criteria. Mr. Past informed the Board that the opposition had caught the club off-guard. Mr. Past asked the support to stand and there were approximately 30 people).

Chairman Smith called for opposition. Mr. Ken Smith, an attorney in Fairfax, represented the opposition and he had them stand. Mr. K. Smith stated that there were a whole lot of questions that had to be addressed and he would address most of them. Mr. K. Smith stated that the community that was in opposition to the application was sympathetic with the desires of the club but that this was not the place to build a pool. Mr. K. Smith stated that the question raised in the staff report was that the staff had not come to a conclusion on the traffic. Mr. K. Smith stated that traffic was a problem.and the opposition was not satisfied with the conditions of the road. Chairman Smith stated that a traffic problem already existed there. He indicated that the request was for a community use and that the traffic generated would be within the community. Chairman Smith stated that VDH&T had to approve the entrance and it was not safe, they would not approve the entrance. Mr. K. Smith stated that the staff concern was that the community was already over-capacited and this traffic would be significantly over capacity. Mr. K. Smith stated that Sunny Coleman had walked the property to try to dermine just what the soil would accommodate. He had indicated that it would not perc to anything close to the size needed. Mr. Horace Jones from the Health Department was present and could speak for himself. Mr. K. Smith stated that Mr. Jones had a concern about how much could go on the property. The Health Department was going to require County water. The septic tank would not be able to hold the water and it would be an environmental problem as well as a health hazard. Mr. K. Smith stated that the capacity was not there.

Chairman Smith stated the concerns would have to be identified and resolved. It was very important that the Board address the issues. Chairman Smith stated that Mr. Jones and Mr. Coleman were both present but Mr. Jones was the one who had to make the decision as to whether it could be approved as a County use. Mr. K. Smith pointed out that Sonny Coleman had indicated that storm water retention was not feasible. Mr. K. Smith stated that Mr. Etear had sold the property to the developer of Stuart Mill Woods to have a subdivision. The developer did not have enough open space and the property was sold with the understanding that it would only be used as open land. In addition to that, Mr. Etear sold to one of the folks with the understanding that the open space would never developed. Mr. Hyland, another property owner, had been given an opportunity to purchase the land in question and had only declined because of the reliance that the property would never be developed. Mr. Hyland inquired if there was a prohibition against using the open space. Mr. K. Smith stated that the definition of open space was open space. Mrs. Day inquired if there had been anything in writing with respect to the transfer of the property from Mr. Etear to the developer about the open space. Mr. K. Smith stated that Mr. Etear had put it as "open space" and the County had interpreted open space as another use. Mr. K. Smith stated that the Comprehensive Plan anticipated a significantly less intense use for the parcel as was pointed out in the staff report. Mr. Yaremchuk stated that he could not believe that the planning staff had addressed every parcel to determine what could go on it. Mr. K. Smith stated that it was in the staff report.

Mr. K. Smith stated that the Board would hear testimony about the wells. He stated that he was not sure how the club planned to fill the swimming pool but they must provide water to the site. In addition to the water problem, the nearest 6" line was ½ million dollars down the road. Chairman Smith stated that there would be other methods of meeting fire protection. Chairman Smith stated that the BZA could not govern the areas that other agencies were required to cover. Mr. K. Smith stated that the fire service input was not sought by the County staff and the BZA did not have that information before it. There was not any testimony from the fire service or any report. Mr. Hyland inquired as to Mr. Smith's suggestions in this regard. Mr. K. Smith stated that he was only informing the BZA of another one of the problems. Mr. Hyland inquired if it was enough of a problem that the BZA should deny the special permit. Mr. Smith stated that the matter alone was not enough to make it go either way but it was something for the BZA to consider. Mr. Smith stated that there did not seem to be any limits within the documenation of membership which was a requirement of the Ordinance.

Mr. K. Smith stated that with regard to the large petition in support, he indicated that he probably would have signed it also. If there was not a reason not to sign it, an individual would usually sign it. He stated that only about 150 families had made a deposit. Membership would cost $1,000 per family. The people in Stuart Mill Woods were getting in free. They were being providing a $1,000 assett in return for the support of the application.

Chairman Smith stated that there was a committment in the use of the land or a promise to the people who purchased it that there was land being set aside for a recreational area. Mrs. Day inquired about the people getting in free. Mr. K. Smith stated that the plan of the club was that there would be 400 to 500 members and the club was providing free membership to any of the residents in Stuart Mill Woods. They would not have to pay the $1,000 but they would be responsible for the annual upkeep. Mr. Smith stated that it was a purely volunteer thing.

Mr. Ken Smith pointed out to the Board that it would be impossible to control the recreational facility. One accident and the environment would be damaged. This would be the closest pool to the creek and the largest one in the vicinity. He stated that storm water retention was a problem as there was the likelihood of flooding through the septic and overflow of pool water into the creek. Five thousand gallons of water would be necessary for the pool. The septic field had to be 120'x120' according to Mr. Coleman. However Mr. Ken Smith stated that Mr. Coleman had indicated that the area provided was only 90'x40'. Mr. K. Smith stated that it was a technical problem that should be addressed and dealt with before any action was taken by the BZA.

Mr. Wayne Etear of Oakton also spoke in opposition. Chairman Smith inquired if Mr. Etear lived in the area and was informed that he lived in Oakton 50% of the time and in the Snenandoah Valley the other 50% of the time. Chairman Smith inquired as to Mr. Etear's interest in the property. Mr. Etear stated that he did not have an interest any longer. His concern was that he had sold the property to the individuals and had practically given it away. He stated that he had tried to get the land perced twice. Mr. Etear stated that the pool people had indicated that they would use the existing well area to fill the pool. It was only a 90 ft. well. Mr. Yaremchuk inquired if Mr. Etear had ever talked to anyone digging the well deeper. Mr. Etear stated that he had but that it would not have done any good.

Mr. Sonny Coleman of 10415 Armstrong Street in Fairfax was the next speaker in opposition. He informed the Board that he had been with Fairfax County for 21 years and had done consultant work. He stated that he had worked with the Health Department for new subdivisions for many years. He had spent a lot of time checking systems that had failed. Sometimes they were able to correct it and sometimes there was no way to do anything about it. He had been asked by Mr. Hylton to check out this property. Mr. Coleman stated that in checking the site the only area he had found for the septic area was an area up next to the northern boundary and was approximately 90'x40'. The rest of the area had hard rock or a high water table. He stated that in most places he had hit there was a possibility that some of the lines would hit hard rock and would have to be moved over. He stated that he could see no way that the septic field would work satisfactory for the area. As far as the storm water retention, only one area would fit the requirements. Mr. Coleman stated that anytime you had high water, there was no way to build the storm retention below ground. The only way was to build aboveground on the southwest corner where the natural drainage existed. He stated that it was not possible to go very deep in the ground. Mr. Coleman informed the Board that it was impossible to develop the property on a septic system.

Mr. Yaremchuk inquired as to what Mr. Coleman would recommend to be constructed for this type of soil. Mr. Yaremchuk stated that the land was originally was set up as open space. He inquired if it would present a problem for a subdivision as far as footings. Mr. Coleman stated that he had worked on the area to the west. It was one house to the acre and had the same type of rock with a high water table. Mr. Coleman stated that they ended up giving up ten lots. Mr. Coleman stated that it would be very difficult to construct a house in that area and that there could be a problem with putting in a basement. Mr. Yaremchuk stated that the property was properly designated as open space because of the physical problems. He stated that it might be possible to build a retention basin on surface. Mr. Yaremchuk asked about the number of acres to be served and was informed by Mr. Coleman there were five acres. Mr. Coleman stated that there was a swale and the applicants would have to obtain an easement off-site. Mr. Coleman stated that a little of the water would go to the east but most of it went to the southwest corner. Mr. Yaremchuk inquired if it was possible to build a home on a concrete slab. Mr. Coleman stated that it would be possible if there was sewer. Mr. Yaremchuk inquired if the rock ran all the way through the general area and was informed it did not.

The next speaker in opposition was Mr. Richard Hylton of 3013 Fox Mill Road who lived north of the subject property. He stated that he had purchased the property in 1974 as undeveloped land. He went to Mr. Etear to find out who owned the six acres. He found out Mr. Etear owned the property and he asked him what he was going to do with the property. Years later after Suart Mill Woods was built, the developer came to Mr. Etear and stated that the County would give him high density if he had open space. Mr. Etear approached Mr. Hylton about the purchase of the property but he did not buy it. Mr. Hylton stated that the property was never intended to be developed for anything as was stated in the staff report by Pete Johnson and Mr. David Stroh. It was open land and was not intended to be covered. Forty per cent of it would be covered. Highest density cover was 12%. Mr. Hylton stated that one factor that had not been mentioned was the noise. He stated that his deck was 120 ft. from the property line. With 450 families, there would be a minimum of 300 to 400 children using the facility everyday. Mr. Hylton inquired as to how you got away from noise destroying the value of his property. He estimated that the value would be destroyed by 25 to 30%. Mr.

Hylton stated that he had built his home and had a lot of money involved in it and now a group was coming along that wanted to develop the adjacent land. He stated that no single person would want that pool where it was proposed. Twin Mill subdivision was four miles away and the other subdivision was two miles away. Mr. Hylton suggested to the Board that the application be denied.

In response to questions from the Board, Mr. Hylton stated that his house was on lot 35A about 150 ft. away. His deck was 120 ft. away from the adjacent property line. Mr. Hylton stated that he could not get away from the pool and was very concerned about the noise. Mr. Yaremchuk inquired if Mr. Hylton had any trees on his lot. Mr. Hylton responded that there were 70 ft. high trees which were thick at the top. They were 35 to 40 years old. Mr. Hylton stated that he would be able to see the lights and hear the noise. Mr. Hylton stated that he had owned the property since 1974 and had built his home in 1976.

The next speaker in opposition was Mr. Frank Proden of 3025 Fox Mill Road. He stated that he lived immediately to the west of the club site. He had several concerns and a lot of environmental problems and location problems with the site. He stated that he lived fairly close and could see the traffic when he looked out his windows. He stated that no expert was going to tell him how the traffic situation was as he lived there. The road was 16 ft. wide without shoulders. Four inches from the road surface was a ditch. There was no place to pull off of the road. The sight distance was 100 paces from an access. Traffic on the road averaged better than 55 m.p.h. Going over the crest to the access had caused many, many accidents. Mr. Proden stated that he could recall 15 accidents within the past four or five months. The County had four major accidents on record. Mr. Proden stated that it was a very dangerous situation. Mr. Proden stated that the situation at this location was very hazardous. He stated that it would be a fatal area.

Mr. Proden informed the Board that little had been said about the environmental impact of the Olympic size pool and the conditions of the soil. Mr. Proden stated that he lived on the land and did not want a pool there that would be abandoned in a few years. Mr. Proden informed the Board that he had riden a horse over the grounds and the empty tracks had filled with water. He stated that the club would have to grade the tennis courts to flatten them out which would open up an underground stream. Mr. Proden stated that he did not want an eyesore in the community. He appreciated the community wanting a pool and all of the efforts they had gone to. He could also appreciate the County not wanting to set a precedent but he could not understand why the County could not help the people as there was a community need. Mr. Proden stated that the club had volunteered one meeting with the citizens 9 or 10 months ago to indicate that they were interested in putting in a pool. He stated that he had to get Mrs. Pennino involved and had not asked for any concessions. The Planning Commission had told the club to increase the distance from 15 ft. to 25 ft. Mr. Proden stated that he was perplexed over the procedures involved.

Mr. Hyland responded that the process was a good one as it gave everyone an opportunity to say whatever they wanted to say. Unfortunately, not everyone was going to like the decision no matter which way it went. Mr. Hyland stated that he would sit at the meeting as long as it took to hear any problems. Mr. Proden stated that he preferred to meet privately. He indicated that he understood the independence of the Board. Mr. Yaremchuk stated that the community should cooperate with the community. He indicated that it would be a lot nicer if the community was united instead of being split. Mr. Yaremchuk stated that it appeared there was a lack of communication. Chairman Smith stated that people had the right to make a decision for themselves. It would be very difficult for 900 people to agree on anything.

The next speaker in opposition was Mr. Don Kelso of 14723 LaGretta Drive in Centreville. He stated that he was hired to conduct a water survey. He discovered Brook Trout in Difficult Run and some in South Fork of the Little Difficult Run. He stated that he did not have a map to show all of the tributaries but he had a map which showed that this population of the Piedmont of Virginia had the only native trout to Virginia. He was concerned about any alteration to the watershed that would affect the Brook Trout. He was concerned about the swimming pools and possible siltation. He stated that the normal procedure to prevent siltation was to use haybales which was not highly efficient. He was also concerned about chemical pollution and leaks and spills and runoff from the parking lot and automobiles. He was concerned about the alteration in the flow of the creek and the increased drainage. He stated that he was extremely concerned about a failure in the field as this was a very small population of Brook Trout. One single event could wipe out the entire population. He stated that this area could be breed stout for other streams. Mr. Kelso stated that the Brook Trout were not tolerant to warm water.

Mr. Hyland stated that the Board did not have any scientific data that the trout were endangered. He inquired as to the number of trout in the population. Mr. Kelso stated that he believed there were about 100 trout. Mr. Hyland asked if the stream was fished and was informed it was.

The next speaker in opposition was Nick Starr of 3000 Fox Mill Road. He stated that he and his wife shared the concerns the Board had heard about during the hearing such as traffic safety, environmental impact, engineering and health, noise and lights. He indicated that their main concern was the effect of the intensive pull of water on the watershed. He informed the Board that most of the homes closest to the proposed swim club used wells for their water supply. The oldest homes had wells 100 ft. or less deep and ran dry often. In addition, the club proposed to use well water to supply all of its water needs. The club had stated that the pool would require 100,000 gallons of water to fill and an additional 5,000 gallons of water a day to maintain the pool, flush toilets and shower. Mr. Starr stated that the statistics showed that the average usage per person per quarter was 8,000 to 10,000 gallons. Using the statistics for the club, between Memorial Day and Labor Day, water would be drawn out of the ground for more than half-a-million gallons. Mr. Starr stated that this gave the citizens some worries as that amount of water would support 55 people or between 11 and 15 households. Mr. Starr stated that there was no way the County would allow 11 to 15 households on a three acre plot of land, especially one that did not perk.

Mr. Starr stated that the surrounding neighbors would be in great danger of having their wells run dry, particularly in the summertime when the County was experiencing dry summers. Mr. Starr informed the Board that he was trained as a geologist but was not a ground water geologist and was not an expert in that area. Mr. Starr stated that the people had to start worrying when the wells ran dry. He stated that he had seen a great number of the wells run dry during the time he had lived in the area. He stated that the immediate citizens were worried about their wells. The residents of the Stuart Mill Woods subdivision were not worried as they were on County water. In summary, Mr. Starr urged the Board to deny the application or to require the club to hook up to County water for all their water usage.

The next speaker in opposition was Mr. Michael Dennis of 11700 Waples Mill Road. He stated that he appeared as President of the Navy-Vale Community League. Mr. Dennis stated that they supported the position of the staff in opposing the application. He indicated that if the Board did decide to approve the application, they had the transcript of the Planning Commission hearing and urged them to take note of the restrictions Mr. Merrill wished to place on it. Mr. Dennis stated that Dr. Kelso had pointed out th environmental concerns. However, he pointed out that the climate for a special permit required concurrence with the Comprehensive Plan.

Mr. Dennis stated that the citizens were concerned over the status of the Brook Trout. He stated that he was not able to get them classified as endangered species but had almost succeeded until there was a new Secretary of Interior. The second question concerning Mr. Dennis was the language concerning the Group IV Community Uses which referred to residents of the nearby residential areas. Mr. Dennis stated that the proposed club was close to the boundaries of the Navy Vale community. Mr. Dennis stated that the Navy Vale was the lowest income community in the Planning Area III. There were pockets of high income subdivisions. Chairman Smith stated that economics were not a part of the application. He asked Mr. Dennis to be a brief as possible and relate his testimony to the application. Mr. Dennis stated that he had three points. The Park Authority had stated that the establishment of a private pool would prohibit the public pool. Number two, it was suggested under Section 8-400 of the Ordinance that the government should be part of the residents of the community. Mr. Dennis suggested that the great part of the people who were supporters of the pool were not members of the community. He stated that petitions in support of the pool were posted in grocery stores well up into Reston. The third point concerned the question of community. Stuart Mill Woods was a cluster subdivision. The land was deeded to the homeowners as part of the subidivision. He questioned whether it was totally legal to alienate control of the open space from the homeowners of the subdivision.

Mr. Hyland questioned as to the extent the pool was being alienated. Mr. Dennis stated that the South Fork Swim and Racquet Club had a majority of members who would not be part of the Stuart Mill Woods Subdivision. As such, they would not have control. There was an agreement of lease between the homeowners and the swim and racquet club. Mr. Dennis stated that his other point was in the 8-400 series was with respect to the permitted uses. He indicated that parking lots were not included in those uses and were not listed in the Group IV, Special Permit Uses. Mr. Dennis stated that the citizens in support had indicated that there was not any other location in which to develop a pool. He presented the Board with a list of 87 undeveloped spots in the general area. Many of them did not perk but were adjacent to areas that did perk. Mr. Dennis stated that he had certain materials available from the U.S. Geological Surveys which he wanted to make available to the Board. He did not belive the pool met the criteria for being in harmony with the County's policies.

The next speaker in opposition was Mrs. Thereas Brown Fiverka. She stated that she had lived and raised her family of six children at 3017 Fox Mill Road for over 22 years. Mrs. Fiverka owned lot 33 which was next door to the Prodens and in front of Mr. Hylton. She stated that her back property line would touch the back corner of the proposed swimming pool site. Mrs. Fiverka stated that the purpose of the Comprehensive Plan was to provide for the orderly growth and development of the land. The purpose of the Board of Zoning Appeals was to act as an impartial body to see that owners of the existing property were protected against unfair development and encroachment on nearby land which would adversely affect their home, or diminish their property values. The peaceful enjoyment of a citizen's homestead was an undisputed right.

Mrs. Fiverka stated that the members of the proposed club were petitioning the Board for the use of the club for their own enjoyment. The club would consist of a lighted swimming pool, lighted tennis courts, a club or bathhouse, paved parking areas, etc. The longtime residents of the community did not have any objections to the homeowners developing their own private exclusive park for their own use and enjoyment. However, the newcomers felt that they had the right to develop a small tract of land which had been designated as an open area into their private playground despite the fact that it was a small parcel and did not butt up in any way to their property lines. She indicated that the impact of the park on the homeowners would be disastrous. She stated that every family would feel the impact of the concentrated development in many ways. The park would be open seven days a week. The club would have swimming meets. There was no way that a row of 6 ft. trees would block out the noise and the lights. The use of the club would soon get out of hand and the people on Fox Mill Road would lose sleep. In addition, it would change the lifestyle of at least 50 homeowners.

Mr. Fiverka informed the Board that the location of the proposed facility was unwarranted and she pleaded with the Board to direct the club to take the facility someplace else.

The next speaker in opposition was Mr. Richard C. Farris of 3011 Fox Mill Road. (At this point in the meeting, Mr. DiGiulian left for the day and did not return. It was 3:50 P.M.) Mr. Farris informed the Board that he had a 15 year old boy who he prohibited riding a bicycle on the road. Mr. Farris stated that adequate sidewalks needed to be provided. The only way to be safe was in an automobile as it was difficult to see people walking on the road. Mr. Farris stated that this type of facility would attract pedestrians and the Board had to provide for their safety.

Another speaker in support was Mr. Alphaso Sabrise, a homeowner in Stuart Mill Woods. He stated that he had heard many speakers and had valuable information for the Board. He was by profession an acoustics expert and had a doctorate in communications. For five years, he was a professional test driver for the Ford Motor Company in Grand Prix Races. With respect to the acoustics point of view, Mr. Hylton as well as others had expressed severe concern with the noise problem. Mr. Sabrise stated that the situation with the location of the pool and tennis courts were such that there was not direct path of sound leaving the only path of sound being a reverberation. If the sound were measured in the winter time, it would probably be 80 dcb of a tennis ball hitting the racquet or the pavement. If the sound was measured in the summertime which was when the facility was to be utilized, it would not reach more than 20 to 30 dcb. Mr. Sabrise stated that this was data he had collected himself measuring the sound of traffic approaching his house. He stated that his house was situated adjacent to the club property. Mr. Sabrise stated that he had lived in his house for 2½ years and the foliage was such that he was not aware of Mr. Hylton's house and could not see his deck. From the driving point of view, Mr. Sabrise stated that he would not attempt to drive at 55 m.p.h. as it would be suicide. Mr. Sabrise stated that he was a Board Member of Stuart Mill Woods and they had looked very carefully at the proposal.

The next speaker was Mrs. Sara Parker who lived opposite the proposed entranceway to the South Fork Swimming Pool. Mrs. Parker informed the Board that she represented seven people living in her household. Mrs. Parker stated that when they purchased their house the previous summer, they had checked several maps of the area and were assured from the County representatives that the neighborhood was well established and R-1 zoning with several larger lots near the subject property. Mrs. Parker stated that when they purchased their home they did not expect a few months later to find a hugh swimming pool and a great big parking lot on the opposite side of Fox Mill Road from their house. Mrs. Parker was disappointed with the application and could not believe it was happening. She asked the Board to consider the traffic problems, the water problems, the noise pollution and the environmental issues and the safety of the children and the people that would be going back and forth into the parking lot. Mrs. Parker stated that it was difficult to get out of her driveway at the present time. In the last six months, she had seen six accidents right in front of her house. Many people come to her house asking to use the phone. She stated that she could not imagine how many people would come to her house during an emergency looking for help. In addition, many people trying to dodge the oncoming traffic had crossed over her lawn leaving tire tracks. Mrs. Parker stated that the road was very narrow and there was no where to go except her yard or the yards on the other side.

At this point in the meeting, the Board took a brief recess from 4:00 P.M. to 4:05 P.M. When the Board returned, Mr. Jones from the Health Department gave testimoney. He stated that he had been in Environmental Health for 22 years. In November, they did a soil analysis. They had basic soils information submitted by Soil Techs. Mr. Jones stated that he agreed with Mr. Coleman that there was a lot of bad soil on the property but there was an area of 100'x 120' on which the primary drainfield could be considered. However, under the County Code, they would be required to have a 50% reserve area which at the present time the club did not have. Mr. Jones stated that the other concern was that with 100,000 gallons of water on filters, the Health Department had had bad experiences with fileters that clogged up and created some problems. Mr. Jones stated that the pool would have to be backwashed for four minutes about every 1,000 backwashes. Mr. Jones stated that the Health Department would require some type of off-site drainage. The third concern was the adequacy of the water supply. The Health Department would not require public water but would require an adequate water supply. Once the pool was filled, the club would probably lose about 500 gallons a day. The minimum daily usage including the bathroom toilets, etc. would be about 4,000 gallons a day. Mr. Jones stated that it would be possible with the backwash to use 5,000 gallons.

The other concern was that the Health Department had outlined the area where 80% of the soils were not suitable and did have a water table problem. Mr. Jones stated that the property had a perk rate of 12 and the Health Department would not hesitate to approve it for 120'x120' but the club would have to have a 50% reserve area.

Chairman Smith inquired if that would service 450 familes. Mr. Jones responded that an area of 140'x90' would serve that many families. Mr. Jones explained that the reserve area would not be for the present time. It would be set aside as required by the Code for future expansion. Mr. Hyland inquired if the Board had any indication that there was an adequate water supply to support the facility. Mr. Jones responded that the average yield was about 14 gallons per minute. He stated that the best solution would be to have public water as the water chemistry was much easier with public water supply rather than a well. Well water would have minerals in it and the pool operator would have to be more skilled. Mr. Hyland inquired as to the distance of the public water and was informed it was 600 to 700 ft. away.

The next speaker to testify was Mr. Larry Johnson who informed the Board that he had performed a soil survey on the property. There was a high water table and rock. However, the area would be satisfactory in meeting the requirements. It was a problem soil. Mr. Johnson stated that there was some question on water standing in perk holes. Three holes had about 1 ft. of water. With the previous rainfall of ½" each day, Mr. Johnson had gone back to check the holes and the water had left the holes. Mr. Johnson stated that the wetness was due to normal infiltration.

Mr. Hyland inquired if in the area that Mr. Johnson and Mr. Jones had testified that the drainfield could be placed, had anyone other than them performed a test drilling. Mr. Johnson stated that an individual from Soil Tech had done a test. Mr. Hyland inquired as to what the subsurface was like. Mr. Johnson stated that he had not done borings in that area.

The next speaker was Mr. Tom Parrot, an attorney in Fairfax, and President of the Northern Virginia Chapter of Trout Unlimited. He informed the Board that the fish were not stocked fish but fish placed here at the hands of the Creator. Mr. Parrot stated that the proposed application was very significant. One of the problems would be siltation. Mr. Parrot stated that the Trout eggs could not filter down to the gravel and the other fish would eat the eggs When there was siltation, it destroyed the process and it would be difficult to avoid siltation Difficult Run. Chlorine was a simple toxen and would kill fish. Mr. Parrot stated that his organization did not know what the future held but they were concerned with the fishery as there was some unique value to the stream. However, he did not feel that the Brook Trout should be the endall to the decision. He informed the Board that this proposal was a high risk plan. There were a lot of ifs in the project.

The next speaker was Ms. Phoebe Kilbe of the County staff. She informed the Board that she worked with the Environmental Policy Division of the Planning Office. She stated that the staff was concerned because the pool was located in an area where the Comprehensive Plan recommended low intensity uses. It was the desire of the citizens to retain the water shed. The open space met the Comprehensive Plan. Chairman Smith inquired as to why the proposed swim club facility would not be considered a low density use. Mrs. Kilbe stated that the Zoning Ordinance allowed pools in open space but the staff felt that the Comprehensive Plan called for this particular area to be low density residential and would not be very urban and would not involve parking lots. Chairman Smith inquired if community uses were included in the plan or whether they were not intended to be part of the plan. Mrs. Kilbe stated that they were talking about two different things as far as the Comprehensive Plan and the Zoning Ordinance. Chairman Smith stated that there were other areas in the County of low intensity uses where community recreation areas had been allowed. He asked how this application was different from the other ones previously granted. Mrs. Kilbe responded that it was because of the Difficult Run Water Shed. The plan for the water shed was based on environmental concerns and the way to protect the environment was through low intensity uses rather than highly technological means. Mrs. Kilbe stated that the staff was also influenced by the fact that this a very clean section of the Difficult Run stream system. They were concerned that even with certain safeguards built into the pool, there could be certain errors that would result in the fish and aquatic wildlife and vegetation being destroyed. Mrs. Kilbe stated that there had been documented instances in the County where the pool water caused fish kill. Chairman Smith stated that it could happen even with the individual pools in the County. Chairman Smith stated that he felt this would be a safer approach as there would be County control and supervision. It would be better to have one pool used by 450 families rather than having 450 families all building individual pools. Mrs. Kilbe stated that the problem with this particular pool was its location right next to the spawning grounds of the trout.

The next speaker in opposition was Susan Proden of 3025 Fox Mill Drive. She informed the Board that she had a petition that opposed the club at this location on environmental reasons. They did not oppose the club itself. Additional reasons for denial at this location was because Fox Mill Road was hazardous and because the club intended to use well water. She presented the Board with the petition. Mrs. Proden discussed the speed limit on Fox Mill Road and the statistics that could be provided from the Police Department. Mrs. Proden stated that the Transportation Report based its assumptions on the fact that the speed was only 35 m.p.h. Another concern was the proposed deceleration lane for cars going north. There was nothing for cars going south and she indicated that there would be an equal number travelling Fox Mill Road that would have to turn into the facility.

352

Inclosing, Mr. Ken Smith stated that he did not develop the traffic as he understood it was included in the record. Mr. Smith stated that Fox Mill Road was a very poor level of service and that a substantial amount of traffic was present.

During rebuttal, Mr. Dole stated that with respect to the traffic safety, the users of the facility worried about the safety of their own families. The sight distance at this location was acceptable for this type of development. He stated that he had several photos to illustrate that point. Chairman Smith stated that the State Highway Dept. would not allow an entrance if there was not adequate sight distance. Mr. Dole stated that a lot of the issues discussed could be cured under the Design Review process. Mr. Dole stated that since this area was open space, they felt the area was adequate and served the community. He realized that there were always problems with neighbors of the immediate site. He indicated that the club would work hard in meeting their concerns. He informed the Board that just the previous week, the whole site plan concept had been changed to move the location of the pool. Mr. Dole stated that the club had looked into the possibility of public water and had checked with the Fire Marshal and been assured that they did not need to bring in the six inch main at this time. They would have to post the money so that when the main was brought down Fox Mill Road, they would be hooked up. It would be possible to use the smaller three inch main currently used by Stuart Mill Woods.

With respect to control, Mr. Dole stated that at the present time there was not any control over any pool dumping into South Fork Run. Just a few yards downstream from the site, Timberlake emptied into the South Fork. Timberlake was treated by raw chemicals dropped right into the water. Mr. Dole stated that the club would do whatever it took even if it required trucking out the effluent or using special filters or holding it in reserve and neutralizing any chemicals that might be contained. Mr. Dole explained that it was their environment also as they lived there too. He informed the Board that there were already a number of private pools in back yards. Mr. Dole stated that the club was not adverse to working out the problems.

Mr. Dole stated that with respect to the number of people living in the area, the development had far exceeded the expectations of the Plan Review of the County. For that reason, there were not any considerations for a County Park facility. The growth rate in this area was one of the highest of any in Fairfax County.

Mr. Dole stated that the reserve area required by the Health Department was for future expansion and not for use at the present time. He stated that the club would limit themselves to what they were proposing to build at the present time. Mr. Dole stated that they were not aware of any swim club in the area and there was a tremendous need in the area. He urged the Board to consider the application favorably. There were very few areas of land left in the immediate area. This particular parcel was an exception.

Page 352, February 9, 1982 Board of Zoning Appeals
SOUTH FORK SWIM & RACQUET CLUB, INC.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-C-088 by SOUTH FORK SWIM & RACQUET CLUB, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to permit community swimming and tennis club located at 3025-A Fox Mill Road, tax map reference 36-4((17))pt. B1, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on February 9, 1982; and

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

1. That the applicant is the lessee.
2. That the present zoning is R-1.
3. That the area of the lot is 3.609 acres.

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

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED for the following reasons: storm water problem and retention thereof; high water table - hard rock; septic engineering: perculation tests indicating site to be inadequate to accommodate proposed membership; traffic on 16 ft. wide road with no shoulders and safety of pedestrians; noise would have adverse effect on the peace of neighbors; availability of pools 2½ to 4 miles away; security problem of the site; density of the proposed use exceeds that of the comprehensive plan; and all other reasons in the recommendation of denial as addressed in the staff report.

RESOLUTION

353

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 with 1 abstention (Mr. Smith)(Mr. DiGiulian being absent).

Page 353, February 9, 1982, Scheduled case of

11:45 A.M. RICHARD PAUL GUERRIERI, appl. under Sect. 3-303 of the Ord. for a home professional office (nutritionist), located 3300 Nevius St., R-3, Mason Dist., 61-2((7))12, 17,356 sq. ft., S-81-M-083. (Deferred from December 15, 1981 to allow additional testimony & decision of full Board & from January 19, 1982 for decision of full Board.)

The Chairman announced that there was not a full Board. Mr. Guerrieri withdraw his request for a decision by the full Board. Mr. Hyland informed the applicant that the Board had a special meeting scheduled for February 11th and could possibly make the decision at that time. Mr. Yaremchuk stated that he was familiar with the property as he had lived in the area for 23 years. Mr. Yaremchuk stated that the opposition's main objections were that they did not want to see a commercial wedge in the neighborhood.

RESOLUTION

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-81-M-083 by RICHARD PAUL GUERRIERI under Section 3-303 of the Fairfax County Zoning Ordinance to permit home professional office (nutritionist) located at 3300 Nevius Street, tax map reference 61-2((7))12, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on December 15, 1981; deferred until January 19, 1982 to allow additional testimony & decision; and deferred until February 9, 1982 to allow additional testimony & decision; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-3.
3. That the area of the lot is 17,356 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.

RESOLUTION

7. The hours of operation shall be Monday, Wednesday and Friday from 9:00 A.M. until 5:00 P.M., Tuesday and Thursday from 9:00 A.M. to 7:00 P.M. and Saturday from 10:00 A.M. to 4:00 P.M.
8. This permit is granted for a period of one year with the Zoning Administrator empowered to grant three one extensions upon written request from the applicant at least thirty (30) days prior to the expiration date.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 354, February 9, 1982, Scheduled case of

12:00 NOON — THOMAS F. JARAS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard and 19 ft. min. rear yard req. by Sect. 3-107 & 2-412), located 1091A Pensive Ln., 12-4((7))39A, Dranesville Dist., R-1(C), 22,740 sq. ft., V-81-D-200. (Deferred from January 19, 1982 & January 26, 1982 for viewing of property & for decision of full Board).

The variance was again deferred for decision of full Board until February 11, 1982 at 9:55 A.M.

//

Page 354, February 9, 1982, Approval of Minutes

The Board was in receipt of BZA Minutes for February 28, 1980; March 4, 1980; March 11, 1980 March 18, 1980; March 25, 1980 and April 8, 1980. It was the consensus of the Board to approve the Minutes as written.

//

Page 354, February 9, 1982, After Agenda Items

Rose Hill Baptist Church: The Board was in receipt of a letter from Pastor Upshaw requesting a withdrawal of the special permit application S-81-L-007 which had been deferred from April 14, 1981 for Notices; May 14, 1981 for a period of 90 days & September 15, 1981 for a period of 90 days in order for the church to decide if they wanted to go through with their request.

Mr. Hyland moved that the Board allow the withdrawal of the special permit application without prejudice. Mr. Yaremchuk seconded the motion and it passed by a vote of 4 to 0 (Mr. Smith).

//

Page 354, February 9, 1982, After Agenda Items

Lawrence Lewy: The Board was in receipt of an out-of-turn hearing request on the special permit application of Lawrence Lewy. It was the consensus of the Board to deny the request.

// There being no further business, the Board adjourned at 5:15 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on Aug. 28, 1983

Daniel Smith, Chairman

Approved: Sept. 6, 1983

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, February 11, 1982. The following Board Members were present: John DiGiulian, Vice-Chairman; John Yaremchuk, Gerald Hyland, and Ann Day. Daniel Smith was absent.

The Vice-Chairman opened the meeting at 10:45 A.M. led with a prayer by Mrs. Day.

The Vice-Chairman called the scheduled case of:

THOMAS F. JARAS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard and 19 ft. min. rear yard req. by Sect. 3-107 & 2-412), located 1091A Pensive Ln., 12-4((7))39A, Dranesville Dist., R-1(C), 22,740 sq. ft., V-81-D-200. (DEFERRED FROM JANUARY 19, 1982 & JANUARY 26, 1982 FOR VIEWING OF PROPERTY AND FOR DECISION OF FULL BOARD).

Page 355, February 11, 1982
THOMAS F. JARAS R E S O L U T I O N

In Application No. V-81-D-200 by THOMAS F. JARAS under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling 3.4 ft. from side lot line and 5.8 ft. from rear lot line (12 ft. min. side yard and 19 ft. min. rear yard req. by Sect. 3-107 & 2-412), on property located at 1091A Pensive Lane, tax map reference 12-4((7))39A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1(C).
3. The area of the lot is 22,740 sq. ft.
4. That the applicant's property has exceptional topographic problems and drainage problems and the lot is somewhat irregular. It appears that this is the only feasible location to construct this deck.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance whall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. Smith being absent)

Page 355, February 11, 1982, Scheduled case of

10:00 A.M. BARRY M. SHERBAL, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 10.0 ft. from side lot line (15 ft. min. side yard req. by Sects. 3-207 & 10-105), located 6518 Spring Valley Drive, Indian Spring Subd., 72-3((5))62, Annandale Dist., R-2, 24,069 sq. ft., V-81-A-185. (DEFERRED FROM JANUARY 5, 1982 FOR NOTICES AND FOR LACK OF A QUORUM).

The first speaker was Barry Sherbal, the applicant. He stated that there was no other location where the garage could be constructed on his property because of the irregular shape and wooded nature of his lot. He stated that his property slopes front to back starting at the front house line and only levels out when you get directly behind the house. Due to the angle of the property line, placing the garage on the opposite side of the house would require the granting of a variance approximately 15 ft. from the side lot line. He stated that the proposed location requires the smallest setback relief of any other place on the property, situates the garage in an unobtrusive, safely accessible location, and has the backing of the

356

adjoining property owner who would be affected by it.

R E S O L U T I O N

In Application No. V-81-A-185 by BARRY M. SHERBAL under Section 18-401 of the Zoning Ordinance to allow construction of detached garage 10.0 ft. from side lot line (15 ft. min. side yard req. by Sects. 3-207 & 10-105), on property located at 6518 Spring Valley Drive, tax map reference 72-3((5))62, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 24,069 sq. ft.
4. That the applicant's property is exceptionally irregular in shape. The testimony of the applicant indicates that he does have topographical problems in the rear of the property which would preclude construction of the detached garage in that area, in addition to a substantial amount of large trees on the rear of the property. The detached garage could not be reasonably placed on the northeast side of the property because there is only 21 ft. between the rear of the house and the northeast property line.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. Smith being absent)

Page 356, February 11, 1982, Scheduled case of

10:15 A.M. REVIEW OF SPECIAL PERMIT FOR FORTHWAY CENTER FOR ADVANCED STUDIES, INC., for a private school of special education granted on February 6, 1979, for a period of three years with a review by the Board of Zoning Appeals having the right to extend the permit, located 10415 Hunter Station Rd., 27-2((1))21 Centreville Dist., 11.89 acres, R-E, S-307-78. (DEFERRED FROM JANUARY 5, 198 FOR LACK OF A QUORUM).

The first speaker was Ann Hardock, 507 N. Roosevelt Blvd., Falls Church, an attorney from Boothe, Prichard & Dudley, who represented the applicant. She stated that there would be no changes in the use permit the Board of Zoning Appeals granted in 1979. The proposed classes would include woodworking, ceremics, landscaping, gardening, needlework, and exercise. She stated that the proposed hours of operation were regularly Sundays from 9 to 5. Ann Hardock stated that special classes would be held on Saturday from 8 to 10 or weekdays from 9 to 5, but the Saturday and weekday events would be limited to ten each per year. The proposed average number of students is thirty for regular Sunday sessions. A maximum number of students has been set for one hundred for Saturday and special events.

FORTHWAY CENTER FOR ADVANCED STUDIES
(continued)

Ms. Hardock stated that when the Forthway Center acquired the property several years ago, the members devoted considerable time to cleaning up the property and planting trees. Craft groups were organized from the members and they undertook construction of a barn-like structure and a one-room guest house. She stated that after the permit was granted in 1979, members began working to convert the existing barn & guest house into a suitable building for the proposed classes. In addition, much of the exterior landscaping has been done by the membership. She stated that the projected completion date for the deceleration lanes and the parking spaces is Spring of 1982.

Ms. Hardock stated that Forthway's membership has expended substantial funds and considerable effort in order to comply with the requirements of the special use permit. She stated that the applicant respects the rural character of the area, and for that reason has gone to great lengths in order in insure that the building that it constructs would blend into the wooded area.

Ms. Hardock read a letter from Cornelius A. Dolby, an abutting property owner, who supported the Forthway Center.

FORTHWAY CENTER FOR ADVANCED STUDIES

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-307-78 by FORTHWAY CENTER FOR ADVANCED STUDIES, INC., under Section 3-E03 of the Fairfax County Zoning Ordinance for a private school of special education granted on February 6, 1979, for a period of three years with a review by the Board of Zoning Appeals having the right to extend the permit, on property located at 10415 Hunter Station Road, tax map reference 27-2((1))21, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on February 11, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-E.
3. That the area of the lot is 11.89 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of memberships shall not exceed 100 members per activity.

8. The hours of operation shall be 9 A.M. - 5 P.M. on Sundays all year round; 9 A.M. - 5 P.M. Monday through Friday, not to exceed ten times per year; and 8 A.M. - 10 P.M. on Saturdays, not to exceed ten times per year.
9. The number of parking spaces shall be 24 as outlined on the plat.
10. Deceleration lanes shall be provided at all the entrances and exits to the property in accordance with the staff request.
11. Improvements and dedication to be worked out with the staff as to the timing in connection with the highway widening as outlined on the plat by Preliminary Engineering.
12. This permit is granted for a period of five (5) years with the Zoning Administrator empowered to grant three one-year extensions upon written request for the applicant at least thirty (30) days prior to the expiration date.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. Smith being absent)

Page 358, February 11, 1982, Scheduled case of

10:30 A.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that a front yard is required along Iron Place and special exception approval is required for crane runway, located 6600 Electronic Dr., I-6, Annandale Dist., 80-2((1))33, 7.3818 acres, A-81-A-013. (DEFERRED FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

11:00 A.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 acres, V-81-A-195. (DEFERRED FROM NOVEMBER 10, 1981 BECAUSE OF PENDING SPECIAL EXCEPTION AND FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

The Vice-Chairman stated that it was the Board's policy not to hear an appeal without the full five-member Board. He stated that Mr. Smith had been delayed and indicated that he would arrive late. The case was deferred until the Chairman arrived.

//

Page 358, February 11, 1982, Approval of Minutes

// Mr. Hyland made a motion to accept the minutes from March 11, 1980 and March 18, 1980. Mrs. Day seconded the motion and the vote was unanimous.

// Mrs. Day made a motion to accept the minutes from April 15, 1980. Mr. Hyland seconded the motion and the vote was unanimous.

// The Board recessed at 11:07 A.M. for ten minutes.

// The meeting re-convened at 11:27 A.M.

Page 358, February 11, 1982, Scheduled case of

11:15 A.M. BETTY DAVIS, appl. under Sect. 18-401 of the Ord. to allow resubdivision into 5 lots with proposed lot 4 having width of 12 ft. and existing dwelling on proposed lot 2 being 20 ft. from a street line (80 ft. min. lot width req. by Sect. 3-306 and 30 ft. min. front yard for dwelling req. by Sect. 3-307), located 7833, 7901 & 7905 Shreve Rd., 49-2((1))137, 140 & 141, Providence Dist R-3, 102,351 sq. ft., V-81-P-215. (DEFERRED FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

The first speaker was Phillip Blevins, of Urban Engineering, the agent for the applicant. He stated that it was the desire of the applicant to develop the property in the most economical fashion while at the same time being able to retain the existing features of the property. He stated that he was asking to be able to use a pipestem lot in lieu of building a public street. He stated that the property was irregularly shaped and had a small amount of road frontage for the size of the property, therefore, he couldn't get the frontage required to be able to develop as many lots as the zoning would allow him to have. He stated that from the engineering studies, the conclusion is that the pipestem lot would give him the best working situation while still being able to save a large amount of trees on the property.

The next speaker was Alfred Wall of 7913 Shreve Road, the next door neighbor, who spoke in opposition to the application.

Page 359, February 11, 1982
BETTY DAVIS
(continued)

Mr. Wall stated that he had lived at 7913 Shreve Road since 1946. He stated that this application was strictly a case of trying to get the most dollars out of the land. He stated that he owned 2.3 acres next door to the applicant's property. He stated that he didn't think any special variances should be granted, and that the Zoning Ordinance should be followed. He stated that his property would depreciate if the variance was granted.

During rebuttal, Mr. Blevins stated that if he didn't get the pipestem and had to develop with a public street, the most logical position for the public street would be right along Mr. Wall's property line. He stated that this might be more detrimental to Mr. Wall than allowing the pipestem to go through.

Page 359, February 11, 1982 Board of Zoning Appeals
BETTY DAVIS R E S O L U T I O N

In Application No. V-81-P-215 by BETTY DAVIS under Section 18-401 of the Zoning Ordinance to allow resubdivision into 5 lots with proposed lot 4 having width of 12 ft. and existing dwelling on proposed lot 2 being 20 ft. from a street line (80 ft. min. lot width req. by Sect. 3-306 and 30 ft. min. front yard for dwelling req. by Sect. 3-307), on property located at 7833, 7901 & 7905 Shreve Road, tax map reference 49-2((1))137, 140 & 141, County of Fairfax, Virginia, Mr. Hyland moved that theBoard of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on Feburary 11, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 102,351 sq. ft.

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED for the following reasons:

The evidence that has been presented today suggests that the property could be subdivided into 5 lots, which would require the construction of a public street. That being done, there would be no necessity for requesting a variance from the Board of Zoning Appeals. That type of plan would permit agreater use of the property. The Board has received testimony from the abutting property owner indicating that although he objects to the proposed plan, he would prefer they use the alternative plan to put six lots and the public street along his property. There have been no good reasons given that would justify a granting of a variance.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1. (Mr. Yaremchuk) (Mr. Smith being absent)

Page 359, February 11, 1982, Scheduled case of

11:30 A.M. THOMAS H. MAGNESS III, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport into a garage 6.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 9504 Rockport Rd., 38-2((35))3, Centreville Dist., R-3, 11,579 sq. ft., V-81-C-214. (DEFERRED FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

The first speaker was Donna L. Magness, 9504 Rockport Road, the applicant's wife. She stated that they would like to enclose the carport for storage purposes and to improve the appearance of their home. She stated that they would not be expanding the structure, just enclosing an existing carport. She stated that the garage would be constructed of brick and aluminum to match the house. She stated that they were too close to the other neighbors to consider building on the other side of the house, and the rear yard was sloped away from the back of the house. Mrs. Magenss stated that across the street from her home, five houses have garages and one has a carport. She stated that there was no opposition from any neighbors.

There was no one to speak in favor of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-C-214 by THOMAS H. MAGNESS III under Section 18-401 of the Zoning Ordinance to allow enclosure to existing carport into a garage 6.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 9504 Rockport Road, tax map reference 38-2((35))3, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1982;and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 11,579 sq. ft.
4. That the proposed enclosure of the carport is going to be limited to the dimensions of the existing carport. The proposed enclosure will not bring the garage any closer to the property line as shown on the plat. There is no other place that a garage could practically be constructed. The proposed enclosure of the garage does not substantially change the nature or type of property which exists in the surrounding area.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. Smith being absent)

Page 360, February 11, 1982 , Scheduled case of

11:45 A.M. NICHOLAS J. ZAVOLTA, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5.5 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), located 2026 Dexter Dr., R-4, Dranesville Dist., 40-1((20))40, 8,625 sq. ft., V-81-D-216. (DEFERRED FROM JANUARY 5, 1982 FOR NOTICES AND FOR LACK OF A QUORUM).

The first speaker was Nicholas Zavolta, 2026 Dexter Drive, who presented his application. He stated that he had previously obtained a building permit to construct a carport addition and has pursued construction only to the extent of pouring the concrete slab. He stated that he now wished to complete the construction by erecting an enclosed garage instead of a carport, because the garage would provide more security and better protection from the elements.

Mr. Zavolta stated that there was no possibility of building a garage on the back of the property because the back is sloped down to the storm sewer.

There was no one to speak in favor of the application and no one to speak in opposition.

R E S O L U T I O N

361

In Application No. V-81-D-216 by NICHOLAS J. ZAVOLTA under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 5.5 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), on property located at 2026 Dexter Drive, tax map reference 40-1((20))40, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 8,625 sq. ft.
4. That the applicant's property is exceptionally small in area and shallow, has a topographic problem in the back - a storm sewer. Enclosing the existing slab which is a carport would provide more security for the applicant's possessions.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. Smith being absent)

Page 361, February 11, 1982, Scheduled case of

12:00 NOON CHILDREN'S WORLD, INC., appl. under Sect. 3-103 of the Ord. for a child care center (approx. 128 children), located intersection of Oak St. (Rt. 769) and Arden St. (Rt. 3450), 39-4((1))pt. of 108A, Providence Dist., R-1, 44,493 sq. ft., S-81-P-073. (DEFERRED FROM NOVEMBER 24, 1981 FOR ERROR IN POSTING AND FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

Mr. Grayson Hanes, 4084 Universtiy Drive, an attorney, represented the applicant.
(FOR FURTHER DETAILS OF THIS HEARING, PLEASE REFER TO THE VERBATIM TRANSCRIPT ON FILE IN THE CLERK'S OFFICE)

Mr. Hyland moved the Board to defer action on this application for two weeks to give each Board member the opportunity to view the subject property and to evaluate the character of the neighboring community.

Mrs. Day seconded the motion. The vote was 3 - 0. (Mr. Yaremchuk abstained) (Mr. Smith being absent) The application was deferred to February 23, 1982 at 8:45 P.M.

Page 361, February 11, 1982, Scheduled case of

12:15 P.M. ROBER M. BREWSTER, appl. under Sect. 18-401 of the Ord. to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), located 11033 Oakton Rd., R-1, Centreville Dist., 47-3((1))54, 21.596 acres, V-81-C-221. (DEFERRED FROM JANUARY 12, 1982 FOR SPECIAL EXCEPTION TO BE HEARD BY THE BOARD OF SUPERVISORS ON JANUARY 25, 1982).

362

The first speaker was Roger Brewster, the applicant. He stated that they made many inprovements when the property was first purchased. He stated that the gravel road that was presently on the property blended in better than an asphalt road. He stated that he was trying to keep a low-key operation so as not to stand out in the community as a commercial establishment. He stated that the special exception was approved by the Board of Supervisors.

In response to a question from Mr. Yaremchuk, Mr. Brewster stated that the gravel driveway adds to the drainage on the property. He stated that he had been at this location for six years.

There was no one to speak in favor of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-81-C-221 by ROBER M. BREWSTER under Section 18-401 of the Zoning Ordinance to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), on property located at 11033 Oakton Road, tax map reference 47-3((1))54, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 21.596 acres
4. This applicant has operated a nursery in a successful manner and in a manner which has not adversely affected property owners in any way for a substantial period of time. The reason this applicant is before this Board is because he placed a shade house on the property, of which construction required obtaining approval from the Board of Supervisors. At the time the Board of Supervisors considered the application, it knew full well the property did not have dustless surfaces. To permit continuation of that property in its present state would keep that property in a manner which is consistent with the rural setting which surrounds it. Requiring the paving of the parking area as well as the driveway would result in water running off that property as opposed to it being retained in its present state which serves the business which the applicant engages in. The paving of the property may be detrimental to the business of the applicant to the extent that oils may wash off the paved surface and be detrimental to the plant life. There is also an economic justification.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. Smith being absent)

363

The Board returned to the scheduled 10:30 A.M. item:

SOUTHERN IRON WORKS, INC. appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that a front yard is required along Iron Place and special exception approval is required for crane runway, located 6600 Electronic Dr., I-6, Annandale Dist., 80-2((1))33, 7.3818 acres, A-81-A-013.

The first speaker was Phil Yates, Zoning Administrator. He stated that this use is a category 5 special exception use in the I-6 District, and that the proposed expansion of this use requires approval from the Board of Supervisors. In addition, he stated that the minimum front yard along Iron Place must be provided.

//The Board recessed at 1:20 P.M. for five minutes.

//The meeting reconvened at 1:25 P.M.

Mr. Yates provided the Board members with copies of the Ordinance from 1941, 1954, 1959 and 1978. He stated that one of the questions before the Baord was exactly what is an iron, steel copperworks, or foundry as enunciated in the Zoning Ordinance. Mr. Yates stated that the subject use is an iron, steel, copperworks, or foundry. To answer a question from Mr. Hyland, Mr. Yates said that his definition of fabricate was that it suggests the making of the product itself, rather than by drilling or putting the product together.

Mr. Hyland, to clarify Mr. Yates definition, asked Mr. Yates if there was no foundry activity, the term iron, steel, or copperworks would then pick up an organization which procures iron, steel, or copper materials from some other source, brings them to the site and then fabricates them into some other product.

Mr. Yates stated that was his definition, and further stated that this position was buttressed with the fact that the smelting of iron is enunciated as anther use.

The next speaker was Bill Donnelly who represented the appellant. He stated that the appellant was appealing two decisions by the Zoning Administrator. The first was that a special exception was needed to build a new crane runway, and the second was that a front yard was needed along Iron Place. He stated that since 1956 a steel fabrication business has been operated on this site which is zoned I-6(heavy industrial). Mr. Donnelly stated that the nature of the business is steel fabrication. He stated that steel is received from mills, and is then cut, has holes punched in it, drilled, and welded. It is then delivered to construction jobs throughout the county. He stated that on September 2, 1981, a building permit was granted to erect the crane runway. There are already several crane runways on the site. Two months later, Mr. Yates ruled that the building permit was invalid, and a special exception was needed for the crane runway. Mr. Donnelly stated that a temporary injunction was obtained from the Circuit Court preventing the county from revoking the building permit. The crane runway has been built, and is almost ready for operation. Mr. Donnelly stated that he felt a special exception was not needed for the crane runway because the company was a steel fabricator, not an iron works.

Mr. Donnelly stated that the appellant had a vested right to build a crane runway either under the unrestricted special use permit that was granted by the Board of Supervisors in 1954, or under the building permit. Mr. Donnelly said that the definition of the Ordinance was ambiguous. He stated that the Board should look at the practical interpretation that this provision of the Ordinance has been given over the years. Southern Iron Works has been in existance since 1956, and there have been numerous expansions on the site. In 1973 a new headquarters was built on the site, and only a building permit was obtained because the point of a special exception was not raised at that time. Mr. Donnelly stated that the Northern Virginia Steel Corporation, located in the County, is a comparable business to Southern Iron Works. He stated that as far as he can tell, there has never been a special exception issued to the Northern Virginia Steel Corporation. He stated that one of the things your should look at when interpreting an Ordinance is how has it been interpreted over the years. Mr. Donnelly stated that what the Ordinance of 1941 had in mind was probably smoke-stack industries. He stated that the people who wrote the Zoning Ordinances in 1941 probably felt smoke-stack industries required additonal regulations over and above the Zoning Ordinance.

Mr. Donnelly stated that when this property was originally re-zoned in 1954, there was a special use permit obtained. He stated that the permit was not granted in accordance with a plat, and there were no conditions or restrictions on the permit. He stated that when a permit is granted for a steel fabrication business on a site without any restrictions, and construction is started, the owner has a vested right to use the entire site in accordance with the permit.

Mr. Donnelly stated that he would like to address the issue of whether Iron Place is a front yard or a side yard. He stated that the parcel was triangular in shape, and there were roads on all three sides. He stated that the main entrance to the site faces Electronic Drive and the street address was on Electronic Drive.

Mr. Donnelly made a summary of all his statements. He stated that he didn't feel Southern Iron Works needed a special exception because they are a steel fabricator, not an iron works. He stated they have a vested right under the 1954 permit because it was unrestricted, and finally they have a vested right by obtaining and relying on a building permit.

364

Mr. Yates spoke during rebuttal. He stated that he totally disagreed with Mr. Donnelly that he had a vested right in the 1954 special permit. He stated that it was spelled out in the staff report under Sect. 9-004 that once a special exception had been granted, the use shall not be extended, increased in intensity, or relocated unless an application is made for a revised special exception.

Mr. Hyland asked if under the 1978 amendment (Sect. 9-004) the Board had made any indication that it would be retroactive or pick up any existing use under a prior permit. Also, he asked if that issue had been litigated in any context.

Mr. Yates answered that a use could have gone to all bounds up until the time the amendment was made. He stated that the use could not expand after the amendment was adopted. He stated that it had been consistantly used since 1978.

// Mr. Hyland left the meeting at 2:05 P.M.

Mrs. Day moved that the Board defer the application in order for the Chairman to hear the tapes and participate in the vote. The application was deferred until February 23, 1982 at 9:00 P.M. The variance application (V-81-A-195) for Southern Iron Works, Inc. was deferred to 9:10 P.M. on February 23, 1982 for decision of full Board.

Page 364, February 11, 1982, Scheduled case of

12:30 P.M. GARY S. IBACH, appl. under Sect. 18-401 of the Ord. to allow construction of a greenhouse addition to dwelling to 9 ft. 7 in. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 4010 Elizabeth Ln., 58-4((8))100, R-1, Annandale Dist., 21,750 sq. ft., V-81-A-225. (DEFERRED FROM JANUARY 12, 1982 FOR DECISION ONLY OF FULL BOARD)

Mrs. Day moved that the Board defer the application to March 9, 1982 at 1:00 P.M. for decision of full Board.

//There being no further business, the Board adjourned at 2:16 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on Aug. 29, 1983

Approved: Sept. 6, 1983
Date

365

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 16, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerlad Hyland and Ann Day.

The Chairman opened the meeting at 10:20 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. JAMES & MARY GEARHART/VINCENT & EMELIA BELTRAN, appl. under Sect. 18-401 of the Ord. to allow resubdivision into 3 lots, 2 of which would have width of 5.00 ft. and the third a width of 4.99 ft. (200 ft. min. lot width req. by Sect. 3-E07), located 1405 & 1409 Crowell Road, R-E, Dranesville Dist., 18-2((5))2 & 3, 8.077 acres, V-81-D-244.

Mr. Ken White, an engineer in Alexandria, represented the applicants. He informed the Board that they were attempting to subdivide the two existing lots into three lots. The justification for the request was because of the irregular lot shape and the topography. At the present time there were two lots, lot 2 and lot 3. Lot 2 had access to Crowell Road. Over that was a 20 ft. easement to lot 3. Mr. White stated that they were subdividing the 20 ft. strip. Each lot would have 5 ft. access to Crowell Road.

Mr. DiGiulian inquired if Mr. White was aware of the Design Review comments which stated that the access easement and common drive for the proposed lots would coincide with the existing access easement currently used by the surrounding properties. Design Review had indicated that equitable maintenance responsibility would be a serious issue and should be resolved prior to approval of the request. In addition, it was stated that the plat should be revised to refledt compliance with the Public Facilities Manual by common driveways. Mr. White informed the Board that he had talked to Design Review on three occasions and they had no problem at those times. Mr. White stated that he assumed that Design Review was referring to the width of the pavement through the access. There was an existing 20 ft. easement which was in use.

Chairman Smith inquired as to how long the applicants had owned the property. Mr. White stated that they had owned it since March of 1978. In response to questions from Mrs. Day, Mr. White stated that the three lots would be on septic.

Mrs. Elaine Stallwell of 1417 Crowell Road spoke in support of the application. She stated that she was the contiguous property owner of lot 1 and was adjacent to the subdivision. She stated that Col. Gearhart had assured her that he would maintain a buffer zone between her property and the road. Mrs. Stallwell stated that she had received the assurance verbally and in writing. With that assurance, Mrs. Stallwell was prepared to support the application. Mrs. Stallwell asked that the provisions made between Col. Gearhart and herself be made part of the record.

There was no one else to speak in support and no one to speak in opposition.

JAMES & MARY GEARHART/VINCENT & EMELIA BELTRAN

R E S O L U T I O N

In Application No. V-81-D-244 by JAMES & MARY GEARHART/VINCENT & EMELIA BELTRAN under Section 18-401 of the Zoning Ordinance to allow resubdivision into 3 lots, 2 of which would have width of 5.0 ft. & the third a width of 4.99 ft. (200 ft. minimum lot width required by Sect. 3-E07) on property located at 1405 & 1409 Crowell Road, tax map reference 18-2((5))2 & 3, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 8.077 acres.
4. That the applicant's property is exceptionally irregular in shape.

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

RESOLUTION

366

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 366, February 16, 1982, Scheduled case of

10:10 A.M. PAUL STUCHLAK, appl. under Sect. 18-401 of the Ord. to allow construction of a garage addition to dwelling to 9.4 ft. from side lot such that total side yards would be 21.9 ft. (8 ft. min. but 24 ft. total min. side yard req. by Sect. 3-207) located 9232 Kristin Ln., R-2(C), Annandale Dist., 69-2((10))2, 10,515 sq. ft., V-82-A-005.

Mr. Paul Stuchlak of 9232 Kristin Lane informed the Board that he was requesting a variance due to the pie-shape of his property. He wanted to build an adequate size garage in order to open the door on his car. Chairman Smith stated that Mr. Stuchlak already had a carport and was in a cluster subdivision. Mr. Stuchlak informed the Board that he had lived in the home for 15 years and the subdivision was 18 years old. He only wanted to enclose the existing carport.

There was no one else to speak in support and no one to speak in opposition.

Page 366, February 16, 1982 Board of Zoning Appeals
PAUL STUCHLAK

RESOLUTION

In Application No. V-82-A-005 by PAUL STUCHLAK under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 9.4 ft. from side lot such that total side yards would be 21.9 ft. (8 ft. minimum but 24 ft. total minimum side yard required by Sect. 3-207) on property located at 9232 Kristin Lane, tax map reference 69-2 ((10))2, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 10,515 sq. ft.
4. That the applicant's property is exceptionally irregular in shape with converging lot lines and has an unusual condition in the location of the existing buildings on the subject property. In addition, there is not any other place on the property in which to construct a garage.

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

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

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

RESOLUTION

367

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 367, February 16, 1982, Scheduled case of

10:20 A.M. FREDERICK G. & CLAIRE G. SUBT, appl. under Sect. 18-401 of the Ord. to allow resubdivision of 2 lots into 3 lots each having width of 70.88 ft. (80 ft. min. lot width req. by Sect. 3-306), located 8701 & 8639 Winthrop Dr., R-3, Mt. Vernon Dist., 111-2((4))(5)9 & 10, 43,668 sq. ft., V-82-V-006.

Mrs. Margaret E. Hirl of 10526 Summerwind Lane in Fairfax Station was the agent for the applicants. She informed the Board that the Subts were not present. Mr. Hyland questioned the power of attorney. Chairman Smith stated that he was bothered by the power of attorney as it was limited to the appeals of the BZA and did not mention hardship. It indicated that this was a rezoning application. Mr. DiGiulian inquired if the Subts had signed the application. Mr. Hyland stated that the application was signed for a variance. Mr. DiGiulian moved that the Board hear the application with Mrs. Hirl as agent for the request. Mr. Yaremchuk seconded the motion. Mr. Hyland agreed that even if Mrs. Hirl did not have the power of attorney, the applicants had signed the application with Mrs. Hirl as agent and submitted it together. Mr. Hyland stated that he would ignore the power of attorney as Mrs. Hirl was authorized to act as agent. Chairman Smith stated that his concern was that the power of attorney was restricted to certain powers. Mr. DiGiulian suggested that Mrs. Hirl withdraw the power of attorney. The vote on the motion to proceed with the hearing passed by a vote of 3 to 2 (Mr. Smith and Mrs. Day).

Mrs. Hirl stated that the applicants were requesting an 80 ft. width be reduced to 70.8 ft. The reason for the request was because of the irregular lot shape which was the hardship in the application. All other requirements of the R-3 district would be met. There would not be any change in the terrain due to the change in the lot configurations. Mrs. Hirl felt that the three lots would greatly enhance the neighborhood. She informed the Board that there was a small non-conforming house which would be demolished and the woods would be taken. Over a period of time, the neighbors would benefit. Chairman Smith inquired if anyone was living in the house. Mrs. Hirl stated that someone was living in the house. She stated that the Subts had owned the property since 1971. Chairman Smith inquired if the property had been rental property all that time but Mrs. Hirl could not answer.

Mr. Yaremchuk inquired as to the hardship of the application. Mrs. Hirl stated that the hardship was the irregular lot. If the property was divided into three lots, it did not meet the minimum district requirements for frontage. The setback on the houses would be met. She stated that without the variance, it would deprive Mr. & Mrs. Subt of the greatest and best use of the property. Mr. Yaremchuk stated that the Board had to make a decision based on hardship. Mrs. Hirl stated that the property was irregular because it was long. Chairman Smith inquired if there was a contract to purchase the property and was informed there was not. Mr. Hyland inquired if there was any opposition from the neighbors and was informed there was. Mr. Yaremchuk inquired if Mr. Hyland was familiar with the property and he stated he was.

There was no one else to speak in support of the application. Mrs. Kathy Moore of 8637 Winthrop Drive spoke in opposition. She represented 20 people from the immediate area. Mrs. Moore informed the Board that she lived next door to the subject property. The citizens in the area were opposed for several reasons among those being that other lots in the area were much much larger than 80 ft. It was felt that a house of any value could not be built on a 70 ft. lot. The property under application drained poorly. The additional third structure could cause problems in the area. The shrubbery was overgrown and there were abandoned autos on the property for over ten years. However, all that was preferable to the change being requested. The citizens were opposed to the request from an absentee owner who resided out of state as he had no concern for the neighborhood. Mrs. Moore asked the Board to deny the application.

The next speaker in opposition was Mrs. William Tedards of 8635 Winthrop Drive who informed the Board that she moved into her house in 1973. During the entire time she had lived in her house, the property of the Subts had been in deplorable condition. The neighbors had tried to talk to realtors to clean up the property but nothing was ever done. Mrs. Tedards stated that the Subts had not come to talk about the requested variance in a neighborly

fashion. Mrs. Tedards stated that all of the neighbors were against the variance request. She stated that they could live with two houses but they could not tolerate three houses. Mrs. Tedards stated that her lot was 106.95 ft. wide and that she lived next door to Mrs. Moore who was between her and the terrible property. Mrs. Moore opposed the variance because of the rural flavor of the neighborhood and because three lots would be a violation of the citizens' rights. She stated that it was the moral obligation of the BZA to deny the request.

The next speaker in opposition was Mrs. Mildred E. Comtois of 1203 Potomac Lane whose property backed up the property in question. She objected to the three houses being put where two lots were indicated. Mrs. Comtois had bought her property in 1963 and put up a 6 ft. redwood fence. She did not want any homes back there and neither did any of her other neighbors.

The next speaker was Mr. John Kilts of 8703 Winthrop Drive who resided next door to the Subt property. He stated that he had a half-acre lot, 100 ft. wide by 217.8 ft. deep. He stated that the lot line in question on his side was the same length. He had always understood that the area was one acre or 2½ acre lots. He had no objections to the three houses but it would be next to his bedroom. The Subts had purchased the property several years ago as investors and had never lived there. The house had always been rented out and the property was never taken care of. Half of the property was nothing but brush and trees and old automobiles. One old auto had a tree growing up out of it. The people that rented the house were nice niehbors and tried to keep the grass cut. Mr. Kilts stated that he had no objections to two houses but he could not see three houses at all.

During rebuttal, Mrs. Hirl stated that she appreciated the concern of the lot owners in the area. However, she wanted to touch on a few things. Mrs. Moore had talked about drainage. Mrs. Hirl stated that the County Code would take care of any drainage problems as it was very particular. With regard to setback, the setbacks for the houses would be met for the R-3 zone as 12 ft. was required. She indicated that the 12 ft. could be met with any type of house chosen. Mrs. Hirl stated that research had indicated that the homes in the area sold from 85,000 to 135,000. The house that would be constructed would be 1500 sq. ft. to 2,000 sq. ft. Mrs. Hirl stated that apparently there was some problem with Mr. Subt and the neighbors. Another point of view was that the problem did need to be taken care of. If the variance were granted, it would be taken care of and it would still be in line with the R-3 zoning.

Chairman Smith stated that there was not any hardship as defined by the Zoning Ordinance. Mrs. Day stated that if the variance were not granted, Mr. Subt would not do anything with the property. Mrs. Day stated that the County could clean up the property and add the cost onto his tax bill. Mrs. Hirl stated that Mr. Subt would not build anything on the property without the variance. Mrs. Day stated that was his prerogative. Chairman Smith stated that reasonable use was the two houses. Mr. DiGiulian stated that Mr. Subt had two existing lots and could construct two houses. Mrs. Hirl responded that it was not economically feasible to construct two houses. She stated that there was enough square footage to construct three houses. Chairman Smith stated that the property did not have the frontage and was not compatible with the existing lots in the area. Mrs. Hirl stated that was why they were asking for a variance. Chairman Smith stated that Mr. Subt already had the right to construct two houses which would be an upgrading of the property and a reasonable use of the land. Mrs. Hirl stated that the Subts had the square footage and the Board was not allowing them the best use of the property.

Page 368, February 16, 1982
FREDERICK G. & CLAIRE G. SUBT

R E S O L U T I O N

In Application No. V-82-V-006 by FREDERICK G. & CLAIRE G. SUBT under Section 18-401 of the Zoning Ordinance to allow resubdivision of 2 lots into 3 lots, each having width of 70.88 ft (80 ft. minimum lot width required by Sect. 3-306) on property located at 8701 & 8639 Winthrop Drive, tax map reference 111-2((4))(5)9 & 10, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 43,668 sq. ft.

369

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved. In addition, no evidence has been presented which indicates there exists any hardship in connection with the reasonable use of the property. It appears that there are two existing buildable lots. The property is not irregular in shape as suggested by the applicant's agent nor are there any other factors to satisfy the requirements of a variance.

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

Mrs. Day seconded the motion.

The motion passed unanimously be a vote of 5 to 0.

Page 369, February 16, 1982, Scheduled case of

10:30 A.M. THE ISLAMIC COMMUNITY CENTER OF NORTHERN VIRGINIA, appl. under Sect. 3-303 of the Ord. for a private school of special education for 25-35 students, located 6028 Columbia Pike, R-3, Mason Dist., 61-4((3))(H)5, 11,720 sq. ft., S-81-M-092.

Mr. Harold Johnson, an attorney in Fairfax, respresented the Islamic Center. He informed the Board that the Islamic Community was an organization of members who had a middle east background. They had formed an organization to provide its members with civic, social and informational teachings. It was comprised of quite a few members. They presently held classes in Park Lawn Elementary. Classes consisted of Arabic languages and Islamic culture. Mr. Johnson informed the Board that the Islamic community had purchased property at 6028 Columbia Pike and wanted to use it for a school on Sundays. The application was made under Sect. 3-303 of the Ord. for a private school of special education for 25 to 35 students. Class would be from 10:00 A.M. to 2:00 P.M. each Sunday. There would be three to four teachers per class. Classes would be held in three rooms on the first floor.

Mr. Johnson called the Board's attention to the plat with respect to the rear yard area. He asked the Board to note that the rear yard area of 6,810 sq. ft. was designated as recreational area for the break periods which would be no more than two in number. In addition, he stated that four parking spaces would be constructed for the teachers in the front yard area. No other improvements would be made to the front yard and no improvements would be done in the rear yard. All students would be carpooled to and from the site. Sufficient space had been provided for discharge in a safe manner. There would not be any congestion of traffic on Columbia Pike because of the carpool arrangements and because it would be on a Sunday. Mr. Johnson stated that they would do any reasonable request of the BZA to modify any objections from the community. The site was in an area which was slowly changing. There was commercial planned across the street. Many of the homes along Columbia Pike were used as home professional offices. The Comprehensive Plan provided that the area was to remain residential. Mr. Johnson stated that the application was not in contradiction with the Comprehensive Plan as it was a temporary use. It would be limited to the present applicants. The applicants had plans to purchase more acreage and construct a community recreation center. Mr. Johnson stated that the President of the organization lived four houses from the subject property. He had discussed the plans with Supervisor Davis and two civic groups in the area.

Mr. DiGiulian inquired if Mr. Johnson had read the comments from Design Review and he stated that he had just received the staff reports. Chairman Smith noted that the staff reports should be presented to the applicants prior to the hearings. Mr. DiGiulian stated that the comments from Design Review placed some severe limitations on the property. He read from the report which state: "Columbia Pike, Rte. 244, is a primary highway. Therefore, provisions for the construction of a standard service drive for the full frontage of the property on Columbia Pike, is required. A standard entrance (minimum 30 feet - maximum 50 feet wide) is required to be constructed into the subject site. This entrance must be located a minimum of 12.5 feet from the side property line." Mr. DiGiulian asked Mr. Johnson for comments regarding the staff report because if the service drive was constructed, it would wipe out the parking in the front. Mr. Johnson stated that the only other solution would be to use the back yard for parking or to provide parking in another manner. He stated that the President had a driveway which could accommodate several cars. Mr. DiGiulian inquired as to the total number of teachers and was informed it would be three to four. Mr. DiGiulian stated that he could not see how the carpools could get in to unload and them get back out again. Mr. Johnson stated that there was a 60 ft. width. Mr. DiGiulian stated that the cars needed room to turn around and he did not think it could be accomplished. Mr. Johnson stated that the President lived four houses away and had sufficient room for parking. Mr. Yaremchuk stated that the applicant had to meet the Ordinance as far as the subject site. They would have to dedicate 30 ft. for a service drive. Mr. Yaremchuk stated that there would not be enough room for the service drive and the house unless the BZA granted a variance.

370

Mr. Yaremchuk inquired as to what Supervisor Davis' reaction had been to the request. Mr. Johnson responded that Supervisor Davis had not commented one way or another. He had referred Mr. Johnson to the civic groups. Mr. Yaremchuk asked what the reception had been from the civic groups. Mr. Johnson stated that the Lake Barcroft President had indicated that he would get back in touch. The Courtland Park group held a meeting and the majority of the group expressed opposition.

Mr. DiGiulian stated that there was no way this would be a safe or adequate pattern at this site. Chairman Smith added that all parking must be on the site itself and not elsewhere. He inquired if the applicants were under contract to purchase the property. Mr. Johnson stated that the applicants had already closed on the property. The house was vacant. Chairman stated that he assumed this school was basically religious. Mr. Johnson stated that the school was civic minded. The religious aspect was taken care of in D.C. at the mast where the Islamic children were educated. Chairman Smith stated that it was unfortunate that the applicants had not found a piece of property that did not require any variances. He stated that the Board was reluctant to grant a variance where a special permit was concerned.

Mr. Hyland inquired as to what purpose the property had been purchased. Mr. Johnson stated that the applicants had purchased the property to hold classes. They were in the process of soliciting funds from the National Organization. In order to solicit funds, they had to own a piece of property before the funds would be advanced. That was why they had closed on the property prior to the special permit hearing. Mr. Hyland inquired as to whether at the time of purchase, the property had been intended to be used as in the present request. Mr. Johnson stated that was the intent. Mr. Hyland inquired if there was a contingency in the contract. Mr. Johnson stated that the contigency was for 60 days and had already expired. Mr. Hyland inquired as to what would be done with the property if the special permit were denied. Mr. Johnson responded that they would have to sell the property.

Mr. Ahmed, President of the Islamic Community Center, residing at 6010 Columbia Pike, spoke in support of the application. He stated that they had purchased the property as they had to have property before attaining funding. There was a contract written subject to the approval of the special permit but there was not enough time in which to schedule the public hearing so they had purchased the property. Mr. Ahmed explained that the reason for requesting the special permit was because they had a social responsibility to their members. They wanted to help the children learn the arabic language and wanted to educate them in the faith. He stated that they had solicited and obtained a contract with the State to use Park Lawn Elementary for over $300 a month. He stated that they had purchased the subject property and had plans for 3½ acres. However, it would cost half a million dollars which they did not have. Instead, they had purchased the subject property to be used for three hours every Sunday. Mr. Ahmed stated that his house was only four houses away and had space for seven cars. In the next block, another member had 100 ft. frontage and did not have any problem with cars being parked there either. Mr. Ahmed stated that he was a teacher and would be able to walk to the site. There would not be a problem with one or two cars parked at the site.

Mr. Ahmed stated that the reason they were seeking the special permit was because of economics. They were paying $300 a month rent at the present time for only three hours use every week on Sunday. Mrs. Day inquired if the children would be outside in the yard at anytime. Mr. Ahmed replied that the house had a basement. The children came to learn, not to play. The hours of the school were from 10:00 A.M. to 2:00 P.M. The class met for one hour then there was a break for prayer. Then the children could get together for 20 minutes. Mr. Ahmed stated that the prayer was a break and there was really no time for playing. After that, there was one more class and then the children went home. Chairman Smith inquired if the organization was using Park Lawn as a religious organiation and whether there was the property for a mast. Mr. Ahmed stated that there was not enough land at the present site. They had the plan but no land. He stated that they wanted something on Rt. 7. Chairman Smith advised the applicants that all parking must be on the site and that parking was not allowed on the street. Mr. Ahmed stated that the plan could accommodate two cars without a problem. He stated that they would stick to the two cars and carpool the teachers.

There was no one else to speak in support. The following persons spoke in opposition. Mr. Houston Summers of 5921 Summers Lane presented the Board with letters of opposition from Mr. Karl Vass of 6020 Columbia Pike and Mrs. Mary Shoaf of 3533 Blair Road. In addition, he presented the Board with a petition signed by over 100 residents of Courtland Park who felt that the special permit application should be denied. It was felt that the property should not be used for anything but single family residences. He informed the Board that the subject house was not vacant and was presently rented by a family with very small children. He stated that the lot was too small and the house was too close to the side lot line and did not meet the parking requirements. No off-street parking could be accommodated. Mr. Summers informed the Board that the subject property was very near the intersection of Columbia Pike and Blair Road. All cars would have to make a u-turn to gain access to the property. There was not any service road and there was not any parking on Columbia Pike. Mr. Summers stated that the applicant had indicated that the house could accommodate 35 children which would be carpooled to the site. He informed the Board that on Sunday, February 14, 1982, he had visited the Park Lawn Elementary and witnessed 16 cars parked there with 8 other cars dropping off passengers. Mr. Summers stated that was far too many to be

accommodated at the Columbia Pike location. Also, he stated that there were far too many people in attendance than was indicated in the application. The adjoining neighbors faced Blair Road and Gordon Streets. He stated that the community center would want to hold fund-raising events. Mr. Summers stated that for the BZA to grant the permit would add to the hazardous traffic conditions. The school would be a nuisance to the neighbors. Mr. Summers stated that many signers of the petition had indicated that they did not oppose the idea of an Islamic Community Center but this property was not the place for the school and community center.

Mr. Summers also informed the Board that there was not a service station across the street as had been indicated but rather a fire station. In addition, he stated that there were not any home professional offices nearby this location on Columbia Pike.

The next speaker in opposition was Mrs. Deidre Rix from the Department of Housing and Community Development. She stated that the subject property was across the street from the Bailey's Neighborhood Improvement Program and Conservation Plan District which was adopted in March of 1976. Mrs. Rix stated that the staff opposed this application on the grounds that it threatened the residential stability of the neighborhood. Mrs. Rix stated that the use was a good one but that this was not the proper place for it. She submitted a memo from the Director stating the opposition.

There was no one else to speak in opposition. During rebuttal, Mr. Ahmed stated that the house in question was rented. The tenants were there. There was not a gas station across the street but a fire station. With regard to the home professional offices, there was a T.V. repair shop and an accounting service. With respect to the parking at Park Lawn Elementary, Mr. Ahmed stated that when there was not any parking requirement, the parents stuck around. However, he stated that they would restrict the parking at the proposed site to what the law allowed. He stated that they would use carpools and have the children dropped off. Mr. Ahmed stated that they would work to make sure the parking was not a problem for the neighborhood.

Page 371, February 16, 1982 Board of Zoning Appeals
THE ISLAMIC COMMUNITY CENTER OF NORTHERN VIRGINIA
R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-M-092 by ISLAMIC CENTER OF NORTHERN VIRGINIA under Section 3-303 of the Fairfax County Zoning Ordinance to permit private school of special education for 25 to 35 students on property located at 6028 Columbia Pike, tax map reference 61-4((3))(H)5, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on February 16, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-3.
3. That the area of the lot is 11,720 sq. ft.

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

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance. The lot is too small to accommodate a use of this intensity. There is not sufficient yard to provide screening for the adjacent residential properties. The front yard parking is inadequate. The Sunday hours of operation from 10 A.M. to 2 P.M. would disrupt the quiet enjoyment of the adjacent neighbors.

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

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 371, February 16, 1982, Scheduled case of

10:45 A.M. THE ISLAMIC COMMUNITY CENTER OF NORTHERN VIRGINIA, appl. under Sect. 18-401 of the Ord. to allow school of special education on a lot which is 60 ft. wide and in a building which is 8 ft. from the side lot lines (80 ft. min. lot width req. by Sect. 3-306, 12 ft. min. side yard req. by Sect. 3-307), located 6028 Columbia Pike, R-3, Mason Dist., 61-4((3))(H)5, 11,720 sq. ft., V-81-M-245.

Page 372, February 16, 1982
THE ISLAMIC COMMUNITY CENTER OF NORTHERN VIRGINIA
(continued)

372

Mr. Harold Johnson, attorney for the applicant, requested that the variance application be withdrawn. Mr. Yaremchuk moved that the Board allow the withdrawal. Mr. DiGiulian seconded the motion and it passed by a vote of 5 to 0.

//

Page 372, February 16, 1982, Scheduled case of

11:00 A.M. L. W. & JOAN M. ANDRUS, appl. under Sect. 18-401 of the Ord. to allow construction of an addition to dwelling 6.8 ft. from one side lot line and 7.5 ft. from the other (10 ft. min. side yard req. by Sect. 3-407), located 2818 Bolling Rd., R-4, Providence Dist., 50-2((6))424, 6,025 sq. ft., V-82-P-007.

Mrs. Joan Andrus of 2818 Bolling Road in Falls Church informed the Board that she was seeking a variance for the minimum side yard of 10 ft. At present, there was only 7.5 ft. on one side and 6.8 ft. on the other. The addition would not extend beyond the width of the dwelling but it would extend 10 ft. back. The lot was narrow. Mrs. Andrus stated that it would impose a hardship if the variance were not granted as the house was too small. She stated that the house did not have a basement. The addition would be a dining room and a family room. She informed the Board that there were several other people on her street who had constructed additions similar to what she was requesting prior to the Ordinance. Mrs. Andrus felt that the variance should be granted because of the hardship and the narrow yard and the fact that the addition would be compatible. She stated that she was not altering the area in any way.

In response to questions from the Board, Mrs. Andrus stated that she had owned the property for 14 years. Mrs. Andrus informed the Board that her neighbors did not object. Mr. Yaremchuk questioned the need for a variance. Mr. Knowlton stated that the variance was necessary because the existing house did not conform to the present setbacks.

There was no one else to speak in support and no one to speak in opposition.

Page 372, February 16, 1982 Board of Zoning Appeals
L. W. & JOAN M. ANDRUS

RESOLUTION

In Application No. V-82-P-007 by L. W. & JOAN M. ANDRUS under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling 6.8 ft. from one side lot line & 7.5 ft. from the other (10 ft. minimum side yard required by Sect. 3-407), on property located at 2818 Bolling Road, tax map reference 50-2((6))424, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 6,025 sq. ft.
4. That the applicant's property is exceptionally substandard in nature both in lot width and lot area and has an unusual condition in the location of the existing buildings on the subject property.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Page 373, February 16, 1982
L. W. & JOAN W. ANDRUS
(continued)

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being out of the room).

Page 373, February 16, 1982, Recess

At 11:55 A.M., the Board recessed the meeting for a lunch break. The Board reconvened at 1:00 P.M. to continue with the scheduled agenda.

//

Page 373, February 16, 1982, Scheduled case of

11:15 A.M. FOX MILL WOODS SWIM CLUB, INC., appl. under Sect. 3-203 of the Ord. to amend S-106-76 for community recreation facilities to permit addition of lights to 2 of 4 existing tennis courts and to establish hours of operation for the lighted courts as 8 A.M. - 10 P.M., May through Oct., & 8 A.M. - 8 P.M., Nov. through April, located 2634A Black Fir Ct., R-2, Centreville Dist., 26-3((10))F2, 5.116 acres, S-81-C-093.

Mr. Allan Freeman of 11706 Ryder's Lane represented the swim club. He presented the Board with some additional letters in support of the club's application. Mr. Freeman explained to the Board that he was the Chairman of the Tennis Committee and a resident of the community for the past seven years. He had been a member of the club since it was formed. The club proposed to add lights to its tennis facilities. Mr. Freeman stated that the current special permit was granted in July 1976 for a tennis operation from 8 A.M. to 9 P.M. and also covered the operation of the pool and a number of other factors. He stated that after some construction delays, the club began operating in July 1978 and the tennis began in October of 1978. Mr. Freeman stated that the club was in its fourth full year. There were 240 familes in the club. The special permit allowed 300 families. However, the club had a general consensus to maintain the membership at 240 families as the club was working very well at that level. Mr. Freeman stated that the club had a good relationship with its neighbors. To his knowledge, there had been only one official complaint. Mr. Freeman informed the Board that the lights had been in the club plan. In developing their proposal, they had worked hard to establish a need for the lights and they had a very fine facility. Mr. Freeman stated that many years ago, tennis was just a fad but it was now an accepted form of conditioning. The lights would add valuable time for working members and for some of the juniors.

Mr. Freeman stated that the club had gone through a long process in the development of the proposed lights. They had started planning the lights a year ago. Then they had done a survey and started discussions with the Board of Directors. They had made site visits to different clubs and had talked to a number of the adjoining neighbors. The final proposal had been gone over and over. The club had incorporated the concerns of the neighbors with regard to the operating hours. Mr. Hyland inquired as to the vote of the membership in the passing of the request for lights. He was informed the lights had passed by a vote of 65 to 12. With respect to specifics, Mr. Freeman stated that the club had four tennis courts but only proposed to light two courts as that would meet the needs of the club. He stated that the club was at its ceiling at the present time. They did not want lights on the other two courts. Mr. Freeman stated that the lights were selected without regard to cost but with regard to the minimum impact on the environment.

Mr. Freeman stated that the operating hours of the club would be from 1 May through 31 October. The lights would be used until 10 P.M. for those months and until 8 P.M. from November through April. The lights would be controlled by a series of key systems. The keys would be sold and the lights would be on only during the time someone was there playing. There would also be an automatic timer to turn off the lights. Mr. Freeman showed the Board a slide presentation of the tennis courts and the existing vegetation and the houses closest to the courts. There was a wooded barrier around the courts 50 to 75 ft. Mr. Freeman stated that the club was at a lower elevation than the surrounding houses so the lights would come up to the level of the land. The lights would be projected down on the courts. Most of the trees were deciduous so the club was only operating until 10 P.M. when the leaves were on the trees and until 8 P.M. otherwise.

In summary, Mr. Freeman stated that the club had developed an excellent facility which was an asset to the community. They believed that the addition would enhance the utility of the club. They had put a lot of work in the proposal of the lights which would not automatically come on and stay on. The lights would be shielded. Because of vandalism, the lights would not be on a coin system but on a key system. The club expected only a few people to be on the courts at night. It would not be a draw to teenagers or vandalism.

In response to questions from the Board, Mr. Freeman stated that the change of hours pertained to the tennis courts alone and did not include the pool. Mr. Hyland stated that there was a letter of complaint in the file regarding the pool hours before 10 A.M. Mr. Freeman stated that it was probably the swim team. Mr. Hyland stated that it would appear the club would be in violation of the special permit if the swim team was there before 10 A.M. Mr. Freeman stated that the amendment filed with the BZA only pertained to the tennis operation.

Mr. Freeman stated that with respect to the swim team, there were three home meets a year. During those home meets, the club needed to get there early to set up and organize the meet. He stated that the swim meets were very popular. Mr. Hyland stated that the second part of the complaint suggested that the County Park was putting in tennis courts that would be lighted. Mr. Freeman stated that the Park Authority would have a swimming pool and that the club would be duplicating the facilities. However, Fox Mill was a club for its members' use as opposed to the Reston Community Center. Mr. Freeman stated that he did not see any real conflict there. Mr. Hyland inquired if there was any negliable impact on the surrounding properties and on the persons within earshot or within eyesight of the club in terms of their being to enjoy their property. Mr. Freeman stated that he did not see any problem. The club was planned and approved and under construction while many of the homes around it were first being designed and breaking ground. Everyone was aware that there would be a pool and a club facility at this location. Everyone was told that lights would not come in with the original request but they were desirable. Mr. Freeman stated that the club was not changing the ground rules. Ten o'clock was not a late time and there was an immense tree barrier which would shield the lights and the noise. Most of the time, the lights would be off. The lights would not be on unless someone was there playing tennis. Mr. Freeman informed the Board that other clubs had 300 to 250 hours of tennis use per year with the majority of that time during the summertime. Mr. Hyland inquired as to the kinds of activities the club had and when it occurred. Mr. Freeman stated that the tennis and pool operation occurred mostly during the summer. There was some tennis in the early spring and then nothing from December through March. Mr. Freeman stated that the club anticipated the majority of the activity to be in the six months specified in the request. The club wanted to be able to play tennis from April through November when the weather was warm.

The next speaker in support of the application was Carl Swann of 2632 Black Fir Court, owner of lot 202. Mr. Swann stated that he adjoined the access lot to the courts. He informed the Board that he was a tennis player as it was a wholesome activity for the family. He had two points in terms of nuisance. One was the traffic that would affect him more than anyone else. The other point was the hours. He stated that his neighbor Mrs. Gelt and he had gone to every home in the immediate area to seek support for the tennis courts. They had talked to 29 of the 32 families and found out their concerns. As a result, the club had changed its request from 11 o'clock for eight months to 10 o'clock for six months. It was felt that this was the spirit and approach to benefit everyone without causing any problems. Mr. Swann stated that the club had done an outstanding job and at some cost. He stated that the club was not isolated and had to consider its neighbors.

The next speaker was William Creekmore who lived on the perimeter of the club. He was fully aware of the tennis courts and the pool when he purchased his property. There was a little noise associated with the facilities but nothing to be considered as a disadvantage. He was in favor of the lights.

Another unidentified speaker informed the Board that the tennis community had done an excellent job and put in a lot work on the proposal. There were a lot of club members who came home from work late and the lights would help them get out to exercise.

Mr. Robert Green of 11702 Waples Mill Road was a member of the Board of Directors of the club. He stated that the site plan indicated that the club was granted in July of 1976 with the hours of operation from 8 A.M. to 9 P.M. Mr. Hyland stated that there was some misunderstanding about the hours. Chairman Smith stated that the club was required to post the resolution on the premises.

Mrs. Dianna Cook of 2670 Black Fir Court spoke in opposition to the request. She stated that she lived beside the tennis courts about 125 away. Mrs. Cook stated that the club pool was used earlier than 10 A.M. She wanted to see the club observe the 10 A.M. starting time for the pool. The tennis club players came early on Sunday morning before the club opened. Chairman Smith informed Mrs. Cook that if she had a complaint, she should file a formal complaint and indicate the nature of the complaint to the proper officials. Mrs. Cook stated that the tennis players began playing as early as 6 A.M. on Sundays and 8 A.M. on Saturdays. Mrs. Cook stated that the club would operate 365 days a year for the rest of her life. She stated that the club was in a technical default as they had never submitted an as built plan to the County according to Sam Demme. She stated that the proposed lights were not part of the original plan and she wondered how any new additions could be made. She informed the Board that Mr. Dick Hoff, County Arborist, had cited the club four years for two violations for not putting up proper screening and plantings. Because the club did not have enough money, they put in seedlings which were now 3 ft. high. Chairman Smith inquired as to the type of seedlings and was informed it was a mix of small trees. Some were deciduous and some were evergreens, some shrubs and some Russian Olives. Mrs. Cook stated that she had mailed a copy of the survey that Mr. Cable had done of the neighborhood and the park which would be constructed at the end of Wild Cherry Road and the playing field. The tennis courts would be lighted until 11 P.M. and were 200 ft. from the nearest home. Mrs. Cook felt that the Board should consider that this was not a matter of need for the club. Mr. Hyland inquired as to when the Park Authority facilities would be constructed and was informed it would be in a year or two.

Mr. Hyland questioned Mrs. Cook regarding the letter she had mailed to the Board about the vote on the proposed facility. Mrs. Cook stated that the vote had been 54 to 30. The 30 votes against the proposal were those homes around the pool. Mr. Hyland stated that Mrs. Cook's letter had indicated that the club did not have any evergreen screening yet the slides had shown the plantings. Mrs. Cook stated that she could see the tennis courts from her house which was 125 ft. away.

During rebuttal, Mr. Freeman stated that he had a conversation with Mrs. Cook about the club's 8 o'clock pool hours but it was not relevant to the tennis proposal. No one played tennis before 8 o'clock. There were a number of people who lived there who had stated that it was not true and there was not any evidence to support Mrs. Cook's allegation. Mr. Freeman stated that as far as the Fox Mill District Park issue, if he wanted to play tennis on courts other than his own, he would do so. However, he had invested his money in his club and did not want to go a distance from his home. Mr. Freeman stated that he had paced the distance from Mrs. Cook's property to the nearest lighted pole on the court and it would be 250 to 450 ft. He stated that the courts would be lighted on the opposite court line which was not the closest point to Mrs. Cook. The minimum distance from the closest pole to the center of the property line was about 200 ft.

With respect to the vote at the annual meeting, there were not 30 votes against the proposal. Mr. Freeman stated that the club had planted a variety of trees, both pine and deciduous trees which were growing up nicely. Mr. Freeman stated that the club had fulfulled its responsibility to the community. Mr. Hyland stated that Mrs. Cook had indicated that some waiver had been to the height of the plantings. Mr. Freeman stated that was true. Mr. Hyland asked Mr. Freeman to respond to Mrs. Cook's comments that the plantings were not adequate. Mr. Freeman stated that when the leaves were off the trees, she could see the club. There was a natural buffer there. Mr. Hyland stated that he was intrigued about the club providing adequate screening and to the extent it had been waived. He asked if there was now an inadequate situation with the lights. Mr. Freeman responded that the trees were planted. There were 4½ dozen pines and all the natural trees. He stated that Fox Mill Woods was a high density development. The average plot of land was 1/3 acre. He stated that one could do one's own planting. Mr. Freeman stated that the club had a very successful operation.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-C-093 by FOX MILL WOODS SWIM CLUB, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to amend S-106-76 for community recreation facilities to permit addition of lights to 2 of 4 existing tennis courts and to establish hours of operation for the lighted courts as 8 A.M. to 10 P.M., May through October and 8 A.M. to 8 P.M., November through April, located at 2634A Black Fir Court, tax map reference 26-3((10))F2, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on February 16, 1982; and

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

1. That the owner of the property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 5.116 acres.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire twelve (12) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. This spermit is subject to all other provisions of S-106-76 not altered by this resolution.
8. Condition no. 9 of S-106-76 shall be amended to read: that the hours of operation for the tennis courts shall be from 8 A.M. to 10 P.M., May through October and from 8 A.M. to 8 P.M., November through April.
9. This permit is granted for a period of one year. Applicant would be required to refile an application through the public hearing process for a continuation of the operation of the two lighted tennis courts for the extended hours as stated above.
10. The applicant must comply with all requirements for obtaining occupancy permits and filing an as-built site plan for the original special permit S-106-76 prior to the installation of the lights approved in this permit.

Mrs. Day seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 376, February 16, 1982, Scheduled case of

11:30 A.M. FOUNDATION WATERPROOFING OF VIRGINIA, INC., appl. under Sect. 3-403 of the Ord. for a home professional (contractor) office, located 4029 Travis Pkwy., Mason Dist., 60-3((15))8, 48,539 sq. ft., S-81-M-094.

Mr. Robert E. Wilson of 4029 Travis Parkway informed the Board that he was the sole owner of the corporation and was requesting a home professional office. He stated that he had checked with the Zoning Office and after finding out that no one could come into his home under a home occupation letter, he decided to file a special permit. He stated that many people did not apply for this type of permit but he wanted somebody to do administrative work in his home. He wanted a person for telephoning, mailing and typing. There would not be any changes to the home in any way. The grounds would remain the same. There would be one additional car at the home which would be parked in the driveway. As far as the traffic there would not be any walk-in traffic. All transactions would be in the client's home with relation to the work that he would provide.

Mrs. Day stated that the statement indicated that there would be two rooms and an attic used by the business. Mrs. Day inquired as to the storage. Mr. Wilson responded that he would have a small amount of storage in the garage. He would have some 1½" plastic pipe that he used in his business and rolls of 3" plastic pipe. All storage would be inside the garage. Mr. Wilson stated that he obtained all of his supplies from the dealers and they were delivered to the job site. He only had a small amount of materials on hand for emergencies. There would not be any large delivery trucks. Mrs. Day noted that there was commercial property to the rear of Mr. Wilson's property.

There was no one else to speak in support and no one to speak in opposition.

Page 376, February 16, 1982 Board of Zoning Appeals
FOUNDATION WATERPROOFING OF VIRGINIA, INC.
RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-M-094 by FOUNDATION WATERPROOFING OF VIRGINIA, INC. under Section 3-403 of the Fairfax County Zoning Ordinance to permit home professional (contractor office located at 4029 Travis Parkway, tax map reference 60-3((15))8, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on February 16, 1982; and

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

RESOLUTION

377

1. That the owner of the property is the applicant.
2. That the present zoning is R-2(C).
3. That the area of the lot is 48,539 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

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

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be 9:30 A.M. to 3:30 P.M., Monday through Friday.
8. There shall be no customers or clients coming to the home.
9. There shall be a maximum of one employee associated with the use.
10. There shall be no commercial deliveries of materials for the business.
11. This permit is granted for a period of three (3) years with the Zoning Administrator empowered to grant three (3) one-year extensions upon written request from the applicant at least thirty (30) days prior to the expiration date.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 377, February 16, 1982, Scheduled case of

11:50 A.M. EDWARD T. BARNES, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport into a single car garage 6.9 ft. from side lot line such that side yards total 18.0 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sect. 3-307), located 7917 Colorado Springs Dr., R-3(C), Springfield Dist., 98-2((6))330, 8,750 sq. ft., V-82-S-008.

Mr. Edward T. Barnes of 7917 Colorado Springs Drive informed the Board that he had made an application to enclose his existing carport into a single car garage. The request was submitted to provide additional storage. The existing house did not have a basement. The garage would store bicycles and a lot of things left outside. Mr. Barnes stated that the garage would enhance the area. In response to questions from the Board, Mr. Barnes stated that the present structure was a covered carport. He would add a wall and was not extending it any. Mr. DiGiulian inquired if it was possible to build a garage any other place on the lot. Mr. Barnes responded that he would have to tear down the carport to get to the garage. He had owned the property for seven years.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-82-S-008 by EDWARD T. BARNES under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport into a single car garage 6.9 ft. from side lot line such that side yards total 18.0 ft. (8 ft. minimum but 20 ft. total minimum side yard required by Sect. 3-307) on property located at 7917 Colorado Springs Drive, tax map reference

RESOLUTION

98-2((6))330, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 8,750 sq. ft.
4. That the applicant's property is exceptionally irregular in shape with converging lot lines and has an unusual condition in the location of a storm sewer easement on the west side of the lot. In addition, in order to build a garage anywhere else on the property, it would be necessary to remove the carport.

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

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

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

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing rhity (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 378, February 16, 1982, Scheduled case of

12:00 NOON — MARTIN A. BACHER, appl. under Sect. 18-404 of the Ord. to allow subdivision of 2 parcels into 2 lots, each having width of 15 ft., (150 ft. min. lot width req. by Sect. 3-106), located 10104 Walker Rd. & 10104 Georgetown Pike, R-1, Dranesville Dist., 12-2((1))13 & 14, 3.844 acres, V-82-D-009.

Mr. Charles Runyon of 7649 Leesburg Pike in Falls Church represented the applicant. He stated that the justification for seeking the variance was the shape of the two parcels. Mr. Runyon stated that the subdivision would allow more reasonable space. Chairman Smith noted that the application had been filed under Sect. 18-404. Mr. Runyon replied that was the number given him when he inquired to the staff. Chairman Smith stated that the application should have been filed under Sect. 18-401. Mr. Runyon stated that the request, purpose and plats were the same. Mr. DiGiulian inquired about the two existing parcels of land. Mr Runyon stated that he was not changing anything but only rearranging the lot line between the two parcels. Chairman Smith stated that the resolution should address Section 18-401 in lieu of Section 18-404.

There was no one else to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-82-D-009 by MARTIN A. BACHER under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 parcels into 2 lots, each having width of 15 ft. (150 ft. minimum lot width required by Sect. 3-106) on property located at 10104 Walker Road & 10104 Georgetown Pike, tax map reference 12-2((1))13 & 14, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.844 acres.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in that one lot does not have frontage. This subdivision is only a rearrangement of the property lines and no additional lot would be created.

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

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

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

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 379, February 16, 1982, After Agenda Items

Reconsideration Request of Albert Raithel and Batal Builders (Link) Applications: The Clerk informed the Board that the matter involving the denial of the variance applications for Mr. Albert Raithel and Batal Builders were still pending for decision. Chairman Smith stated that the Board had more or less agreed that the only thing it could do at this point was deny the reconsideration based on the County Attorney's opinion. Mr. DiGiulian inquired if the Board had voted on that agreement. He stated that he could not see how the Board could reconsider an action it took to grant something but could not reconsider an action it took to deny an application. Mr. DiGiulian stated that didn't make sense to him. Chairman Smith inquired if the reconsideration request had come in within the next meeting. The Clerk informed the Chairman that it had come in at the next meeting and the Board had taken the matter under advisement. There were two cases denied by a vote of 2 to 2 with Mr. Hyland being absent that day.

Mr. Hyland inquired as to what the Board had done procedurally when the reconsideration request came up. The Clerk stated that the Board had examined both requests and indicated that the Board needed to seek advice from the County Attorney so it had held the matter in abeyance. The Clerk stated that the matter had been under advisement since October 21st. Chairman Smith stated that there was no indication that there was anyting new to present in either case. Mr. DiGiulian stated that he believed he had moved to reconsider at that meeting. Chairman Smith stated that any decision the Board makes to deny something could not be reconsidered for a period of one year according to the County Attorney.

Mr. Hyland stated that he had raised the question at the last meeting as to the authority of the BZA itself to move to reconsider an action it had taken previously the week before. Mr. Hyland stated that he felt the County Attorney's memorandum was well reasoned but it left this particular issue up in the air.

After further discussion of the matter, the Clerk was directed to prepare a verbatim of all discussions involving these matters and to seek another opinion from the County Attorney with respect to Mr. Hyland's question. The Board stated that it wanted to have an opportunity to discuss the opinion with the County Attorney and the Zoning Administrator at its meeting on March 9, 1982.

//

There being no further business, the Board adjourned at 2:50 P.M.

380

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on Aug. 29, 1983

Daniel Smith
Daniel Smith, Chairman

Approved: Sept. 6, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday evening, February 23, 1982. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Ann Day, and Gerald Hyland. Mr. Yaremchuk was absent.

The Chairman opened the meeting at 8:30 P.M. led with a prayer by Mrs. Day.

8:00 P.M. AREA LANDSCAPING, INC., appl. under Sect. 18-401 of the Ord. to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), located 4118 Olley Ln., R-1, Annandale Dist., 58-4((1))37A, 2.6304 acres, V-81-A-222. (DEFERRED FROM DECEMBER 15, 1981 FOR ADDITIONAL INFORMATION FROM DESIGN REVIEW & DECISION OF FULL BOARD AND DEFERRED FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

Page 381,February 23, 1982
AREA LANDSCAPING, INC.

R E S O L U T I O N

In Application No. V-81-A-222 by AREA LANDSCAPING, INC., under Section 18-401 of the Zoning Ordinance to allow plant nursery with existing gravel driveways and parking (dustless surface req. by Sect. 11-102), on property located at 4118 Olley Lane, tax map reference 58-4((1))37A, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1982; and

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

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 2.6304 acres.
4. That the applicant has operated the subject site as a nursery for 27 years. During that 27 year period the gravel driveways and parking have not been paved. The gravel driveways and parking, if kept in their present form, would be in keeping with the nature of the business and would improve the water retention and plant growth on the site.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1. (Mr. Smith) (Mr. Yaremchuk being absent)

Page 381, February 23, 1982, Scheduled case of

8:15 P.M. ARTHUR L. & GLENA D. COFFING, appl. under Sect. 18-401 of the Ord. to allow subdivision into 5 lots and 2 outlots with proposed lots 1,2,3,4 & 5 having width of 3.60 ft. (80 ft. min. lot width req. by Sect. 3-306), located Kendale Rd., R-3, Mason Dist., 60-3((24))8 & 60-3((31))A, 2.407 acres, V-81-M-217. (DEFERRED FROM JANUARY 5, 1982 FOR LACK OF A QUORUM).

Mr. Chip Paciulli who represented the applicant, asked for a deferral. He stated that there was not a full Board, and there were several new pieces of information he had just received that he had not had time to review yet.

Page 382, February 23, 1982
ARTHUR L. & GLENA D. COFFING
(continued)

382

Mr. DiGiulian moved that the application be deferred to April 27, 1982 at 8:00 P.M. for the applicant and the Board to have an opportunity to review the additional information received.

Page 382, February 23, 1982, Scheduled case of

8:30 P.M. KNOLLWOOD BAPTIST CHURCH, appl. under Sect. 6-303 of the Ord. to amend S-133-77 for church and related facilities to permit small additions to existing church building, located 10000 Coffer Woods Rd., PRC, Springfield Dist., 78-3((1))40, 5.00162 acres, S-82-A-002.

The Chairman stated that the notices were not in order and the application was deferred to April 6, 1982 at 10:00 A.M.

//

Page 382, February 23, 1982, Scheduled case of

8:45 P.M. CHILDREN'S WORLD, INC., appl. under Sect. 3-103 of the Ord. for a child care center (approx. 128 children), located intersection of Oak St. (Rt. 769) and Arden St. (Rt. 3450), 39-4((1))Pt. of 108A, Providence Dist., R-1, 44,493 sq. ft., S-81-P-073. (DEFERRED FROM 2/11/82 TO GIVE BOARD MEMBERS AN OPPORTUNITY TO VIEW THE PROPERTY AND FOR DECISION OF FULL BOARD).

The application was deferred until March 9, 1982 at 1:10 P.M. for decision of full Board.

//

Page 382, February 23, 1982, Scheduled case of

9:00 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that a front yard is required along Iron Place and special exception approval is required for crane runway, located 6600 Electronic Dr., I-6, Annandale Dist., 80-2((1))33, 7.3818 acres, A-81-A-013. (DEFERRED FROM 2/11/82 FOR DECISION OF FULL BOARD).

9:10 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 acres, V-81-A-195.

Mr. Hyland moved the application be deferred to March 9, 1982 as the first item at 10:00 A.M. for decision only. He indicated that in the event the appeal is favorable, the variance will be deferred to March 9, 1982 at 1:30 P.M.

Page 382, February 23, 1982, AFTER AGENDA ITEMS

HUNTER MILL SWIM & RACQUET CLUB: The Board was in receipt of a letter from Rueben D. Cook requesting an out-of-turn hearing. It was the consensus of the Board to deny the request and schedule the application at the regular time. The vote was 4 - 0 (Mr. Yaremchuk being absent)

//

Page 382, February 23, 1982, After Agenda Item

DONALD M. & MARY L. SIMPSON (V-81-V-146): The Board was in receipt of a letter from Mr. George Hohein, Attorney, 7904 Penn Place, Alexandria. Mr. Hohein alleged that the affidavit submitted by Mr. Simpson was not valid, and he did not like the fact that he was not given time to respond at the continued hearing.

It was the consensus of the Board by a vote of 3 - 1 (Mr. Smith) (Mr. Yaremchuk being absent), that the minutes of the meeting be researched and prepared so that the Board could review the action taken at the first meeting on this application.

// There being no further business, the Board adjourned at 9:40 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on Aug. 29, 1983

APPROVED: Sept. 6, 1983
Date

383

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 9, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian (arriving at 10:55 A.M.); Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman opened the meeting at 10:25 A.M. and Mrs. Day led the prayer.

Chairman Smith called the scheduled case of:

SOUTHERN IRON WORKS, INC., appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that a front yard is required along Iron Place and special exception approval is required for crane runway, located 6600 Electronic Dr., I-6, Annandale Dist., 80-2((1))33, 7.3818 acres, A-81-A-013. (DEFERRED FROM 2/11/82 & 2/23/82 FOR DECISION OF FULL BOARD).

Chairman Smith announced that Mr. DiGiulian would not be participating in the decision of the Southern Iron Works Appeal has he had some connection with the appellant. Therefore, it was not necessary to delay decision for a full Board.

Mr. Yaremchuk moved that the Board of Zoning Appeals grant-in-part the appeal of the Zoning Administrator's decision as far as the special exception was concerned. With respect to the front yard setback, that matter was to be considered by the Board at 1:30 P.M. Mr. Yaremchuk stated that with respect to the special exception, he moved that the Board not uphold the decision of the Zoning Administrator. He stated that this was not an iron works but a steel fabricator. Mr. Yaremchuk stated that he did not see where an iron works was defined. He stated that when the original application was submitted, it was done by metes and bounds and no conditions were set forth. Therefore, Mr. Yaremchuk did not feel that a special exception at this time was required and he moved the Board not to sustain the Zoning Administrator.

Mrs. Day seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

//

Page 383, March 9, 1982, Scheduled case of

10:00 A.M. & TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN, appl. under Sect. 3-E03 of the Ord. to permit continued use of two trailers for Church School purposes, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, S-81-D-084. (DEFERRED FROM 1/26/82 FOR AMENDMENT TO VARIANCE).

10:20 A.M. TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN, appl. under Sect. 18-401 of the Ord. to continue to allow trailer to remain 2.4 ft. from side lot line & to permit other than dustless surfaces for the entrance, travel aisles and parking area, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, V-81-D-230. (DEFERRED FROM 1/26/82 FOR AMENDMENT TO VARIANCE).

Chairman Smith stated that the first item to be considered was on the continued use of the two trailers. Mr. Paul Ward represented the church. Mr. Ward informed the Board that the church had just been before the BZA and most of the data had been presented at the last hearing. Chairman Smith asked Mr. Ward to restate the request and the hardship for the variance. Mr. Ward stated that the church was requesting the continued use of two trailers on the property. The church had been in existence for 10 to 12 years. The two trailers were used to hold Sunday School classes. In addition, there was a minimum amount of office space. The trailers had been in place for eight years. Mr. Ward stated that the neighbors did not object to the trailers at the time of the placement. The church wanted the continued use of the trailers for another three year period. They were building onto the church and planned to begin construction in 1983. The church had hired an architect. The new building would house all religious classes and offices at that time.

Mr. Hyland stated that he had not been on the Board at the time the church originally requested the trailers and had to review the file. Everything in the file indicated that the trailers had been there for a substantial period of time. Mr. Hyland stated that it had been a clear consensus from the Board and a representative from the church that the trailers would only be there for a temporary period. In 1974, Mr. Barnes, Mr. Kelly and Mr. Runyon had viewed the property. The trailers were approved only on a temporary basis. In each granting thereafter, the trailers had been on a permanent basis. Again, the Board was being asked to extend the trailers for another three years. Mr. Hyland stated that in reviewing what had been done in the past, his first reaction was why again. However, Mr. Ward had indicated that the church was in the building process at last. Mr. Hyland asked why the church kept coming back to the BZA. Mr. Ward stated that during World War II, there were buildings used for temporary periods which were not removed until 25 years later. He stated that was the situation here. The funds had not been made available to the church. The church had not grown as anticipated. However, the church was now in a position to go

forward with its building plans. He stated that the funding was now in sight. The church had $40,000 in the bank and money budgeted to be made available for construction purposes. Mr. Ward stated that he could not defend why the church did not build earlier.

384

Mr. Hyland stated that if someone came to the Board on three, four or five occasions and kept saying that it was only temporary, he had to reach a point that it was not temporary but permanent. He stated that the trailers were not temporary after eight or nine years. However, Mr. Ward had raised the issue that contruction would commence in 1983 and it would take 1½ years for the church to be completed. Mr. Ward stated that the church had a chart. Between now and the end of June the church had to select an architect. Early June through December they would work on building plans. February of 1983, they would select a building contractor and construction would begin after February of 1983.

Mr. Hyland stated that there was another request following this application for the premises to be used as a Montessori School. Mr. Ward stated that the church was not addressing that application. He stated that the church could not enter into an agreement to hold school there during 1982 and 1983 and were withdrawing its permission for the Montessori School to operate at the church.

Pastor John Miller informed the Board that he had been with the church for two years. He stated that the church had many problems in the past. He indicated that perhaps the planning for construction was started a bit prematurely. If the church was burdened with replacing the trailers they would so but it would be very hard for the congregation to sustain when they were utilizing all their energies in the building fund. Mr. Hyland inquired if the construction would be completed in two years. Mr. Miller stated that it should be completed in two years. He stated that the last church built in Great Falls took over a year.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-81-D-084 by TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN under Section 3-E03 of the Fairfax County Zoning Ordinance to permit continued use of two trailers for church school purposes, located at 9222 Georgetown Pike, tax map reference 13-2((1))8, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-E.
3. That the area of the lot is 7.0 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. Unless otherwise stated herein, this special permit is subject to the previously granted permits; namely S-174-74; V-175-74; S-307-76; S-7-79 and V-8-79.
8. This permit is granted for a period of two (2) years.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian having not arrived at the meeting yet).

Page 385, March 9, 1982
V-81-D-230

Chairman Smith asked for testimony regarding the variance application of Trustees of St. John's Episcopal Church of McLean. Mr. Paul Ward represented the church and informed the Board the variance was to permit the trailers to remain in their present location. As he had stated in the previous testimony for the special permit application, the trailers had been on the church property for eight years. This was only a request to permit them to remain for a limited period of time as the church did not anticipate going beyond the new time frame. The dustless surface was a new matter for the church. Mr. Ward stated that the church had been before the BZA on two other occasions. The dustless surface matter had never been raised before and apparently had been an oversight. The variance would be to allow the continued use of the trailers and the use of the existing travel aisles in their present form.

Pastor John Miller spoke in support of the variance. He stated that he lived on the property. He informed the Board that the trailers were on the edge of a field. The neighbors supported the church. In the future planning for construction, the church would address themselves to the Code.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-81-D-230 by TRUSTEES OF ST. JOHN'S EPISCOPAL CHURCH OF McLEAN under Section 18-401 of the Zoning Ordinance to allow trailer to remain 2.4 ft. from side lot line & to permit other than dustless surfaces for the entrance, travel aisles and parking areas on property located at 9222 Georgetown Pike, tax map reference 13-2((1))8, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 7.0 acres.
4. That the applicant's property has an unusual condition because of the pending church construction. The use of the seven acres is utilized at the far rear of the property. The trailers shall be allowed to remain 2.4 ft. from the side lot line, and the dustless surface shall be allowed for the entrance, travel aisles and parking areas.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Orinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall run concurrently with Special Permit S-81-D-084 and shall expire in a period of two (2) years.

Mr. Hyland seconded the motion.

The motion passed by a vote of 5 to 0.

Page 386, March 9, 1982, Scheduled case of

10:30 A.M. MONTESSORI CHILDREN'S CREATIVE CENTER, INC., appl. under Sect. 3-E03 of the Ord. to permit nursery school, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, S-81-D-085. (DEFERRED FROM 1/26/82 FOR AMENDMENT TO VARIANCE FOR CHURCH APPLICATION).

Mr. Paul Ward informed the Board that he believed the school was dropping its application. He stated that the school was to be in the St. Johns Episcopal Church of McLean. As there was not a representative of the school present at the hearing, the Board of Zoning Appeals deferred the application until March 16, 1982 at 12:30 P.M.

//

Page 386, March 9, 1982, Scheduled case of

10:40 A.M. BUFFALO HILLS CITIZENS ASSOCIATION, appl. under Sect. 18-301 of the Ord. to appeal Zoning Administrator's decision that, as of November 17, 1981, the activities of Bethany House of Northern Virginia, Inc., at 3014 Castle Road, did not constitute a Group Residential Facility as defined by the Zoning Ordinance, R-3, Mason Dist., 51-3((13))44 & pt. 45, 26,457 sq. ft., A-81-M-014. (DEFERRED FROM FEBRUARY 9, 1982 ON REQUEST FROM THE BOARD OF SUPERVISORS).

Mr. Philip G. Yates, Zoning Administrator, informed the Board that this was an appeal of his decision that as of November 17, 1981 the activities of Bethany House at 3014 Castle Road did not constitute a group residential facility as defined in the Ordinance. He stated that he had given the Board a comprehensive staff report. Mr. Yates stated that the report as well as the attached memo represented his position on the matter. However, Mr. Yates highlighted some points contained in page 4 of the report:

"It is my position that a total of four (4) unrelated persons residing at 3014 Castle Road or in any other dwelling unit in the County does not constitute a group residential facility. Regardless of the circumstances which may bring them together, a total of four (4) unrelated persons may reside in any dwelling unit in the County under the provision of Par. 2 of Sect. 2-502 of the Zoning Ordinance. To rule to the contrary would be discriminatory.

I well appreciate the position set forth by the appellants that the Articles of Incorporation of Bethany House of Northern Virginia, Inc., public statements made by Mrs. Ward, the fact there are eight (8) beds set up in the dwelling unit and the team inspection are all suggestive that a group residential facility exists at this location. It is my position that these several points are merely indicative of a desire or intent to establish a group residential facility butthat intent had not become a reality at this point in time."

Mr. Yates informed the Board that several inspections had been made at the property during the past several months and only four persons were at the address. On one instance when there were five persons, a notice of violation was forwarded to the Wards. Mr. Yates stated that the term "group residential facility" did not set a minimum number of residents. However, from Sect. 2-502 of the Ordinance, one could conclude that a group residential facility would contain five to eight individuals.

Mr. Hyland interjected a question at this point. He asked that in terms of Sect. 2-502 and the section of the Ordinance which defined and controlled a group residential facility whether they were added to the Ordinance at the same time or at different times. Mr. Yates responded that paragraph 2 of Sect. 2-502 was pre-eixsting to paragraph 3 on group residential facilities. Mr. Yates stated that it was his position that there was not a problem with the maximum of eight individuals. There was not a minimum number cited but when you had five individuals, it would be a group residential facility according to Mr. Yates' position. He stated that the Board of Supervisors knew that a group residential facility would have from five to eight individuals.

Mr. Yates stated that his staff had made several inspections over the past several months. It was his determination that the subject dwelling unit was not a group residential facility. He stated that if there were more than individuals, he would have to agree with the appellants that the use would be a group residential facility.

387

Mr. Hyland stated that this was a difficult case. He stated that the definition of a group residential facility discussed in terms of unrelated persons. Mr. Hyland stated that there could be four or five brothers and sisters. Mr. Hyland stated that it seemed that the definition of group residential facility in addition to number, talked in terms of the kinds of persons who resided as additional testimony. Specifically, physical, mental or social difficulties. Mr. Hyland stated that Sect. 2-502 of the Ord. in talking about four unrelated persons did not have that qualifier such as to fit in the definition. The charter of Bethany House, Inc. was to provide services for those kinds of persons who were identified in the definition of a group residential facility. They would only take care of those kinds of persons. Mr. Hyland stated that they would only have four but they did have five individuals at one time. Mr. Hyland stated that they fell within the definition. Mr. Hyland stated that he guessed there was a conflict to the extent that the definition talked about a maximum and not a minimum. He inquired if that meant that you could not have a group residential facility with four persons having a social difficulty and being serviced by an organization whose express purpose was to help persons that met that definition. Mr. Hyland stated that he saw the dilemna the Zoning Administrator had. Mr. Yates stated that it was a good analysis of the problems and the issues that were before the BZA.

Chairman Smith inquired if during the course of the inspections there were ever more than four residents at the facility. Mr. Yates stated that there was five individuals on one occasion. There was a supervisor and three residents, one of which had a child which brought the total to five. The number was brought back down to three clients and one supervisor. Chairman Smith inquired if the individuals resided there on a temporary basis or a semi-permanent basis or permanent basis. Mr. Yates stated that it was temporary. Individuals came in for a brief period of time and others replaced them with a maximum of four persons at any one time.

Mr. Yates noted that this was not the only facility where such a ruling would have an effect. There were other facilities throughout Fairfax County that based on Mr. Yates' determination that as long as there was a maximum of four, it was a use permitted by right. Mr. Yates stated that the implications were not only applicalbe to this situation but to at least twelve other uses throughout the County.

Mr. Hyland inquired as to whether there was any indication from the Wards as to why there ere eight beds as opposed to four. Mr. Yates replied that it was their intent and desire to file for a permit for a group residential facility. Mrs. Day asked that if there were eight beds and an intent to file for a group residential facility and there were eight individuals whether it would meet all of the County requirements. Mr. Yates responded that only a maximum of six individuals could be taken care of in this facility because of the capacity of the septic system. If there were eight individuals, it would be considered a group residential facility and it would require a permit. Mr. Yates stated that he made the point that there was an intent but he could not issue a violation based on intent.

Mr. Hyland stated that the Zoning Administrator had indicated that on one instance there were five persons at the site. Mr. Hyland stated that being the case, that it would greatly violate Sect. 2-502. Once you have five persons, Sect. 2-502 did not permit any cover for the owners of the home. He asked if it then triggered the requirement for the owners to make an application for a group residential facility permit. Mr. Yates stated that they would have had to apply for the permit or reduce the number of individuals. They opted to reduce the number. Mr. Hyland inquired as to what controls the County or the citizens had other than weekly or daily inspections to know whether there were one or eight individuals in the home. Mr. Hyland stated that the County would have to make constant checks. He stated that he was intrigued with the eight beds. Mr. Hyland stated that this was a Catch-22. If there were five individuals, it was a group residential facility and they would have to go through the process. The owners when they got caught would only have to reduce the number down to four. Mr. Hyland stated that the community needed to be protected. Mr. Yates stated that he did not see how one could draw a conclusion with eight beds. He stated that in his residence, he had twice as many beds as family members. Mr. Yates stated that the problem he had was a problem with paragraphs no. 3, 2 and 1 of monitoring.

Mr. Hyland inquired as to the terms of the occupancy permit and whether there was any distinction made that would control the use of the premises as it was not being used for strictly residential purposes. Mr. Yates stated that his office did not issue a new occupancy permit. Mr. Hyland stated that this was a business. He inquired if it was a profit or non-profit organization and was informed it was non-profit. Chairman Smith stated that it was a religious self-help group and Mr. Yates stated that was correct.

Mr. William T. Ward, an attorney, represented Bethany House. He stated that he had prepared a response on behalf of Mr. Yates. Mrs. Ward was the administrative officer of Bethany House. The use was associated with the Mt. Pleasant Baptist Church. Chairman Smith asked if other churches were also involved. Mr. Ward stated that there were other churches and people who were concerned who had asked that a system be set up for battered spouses. He presented the Board with a petition signed by 730 people who were in support of Bethany House. Chairman Smith inquired if they intended to apply for a group residential facility for this location. Mr. Ward stated that at this time, they had deferred that decision for several reasons. He stated that they were considering an alternate location. Another reason

388

was that if they applied for a group residential facility, then they would still be limited to six people. If the public sewer was hooked up, it could accommodate fourteen people.

Mr. Hyland inquired of Mr. Ward as to whether he had reviewed the definition of a group residential facility in the Ordinance. He stated that Mr. Ward was familiar with the purposes of Bethany House and was aware of the type of persons being served by the facility. Mr. Hyland asked if in Mr. Ward's opinion, this was a group residential facility. Mr. Ward stated that it was not as it was being operated at the present time. The definition of a group residential facility included within it terminology addressing persons who require community assisted living. Mr. Ward stated that they had taken that approach. The people are screened at John Calvin Presbyterian Church. If the people were suffering from drugs or emotional needs, they were referred to some other area. Mr. Ward stated that they limited the type of person who could be accommodated at this facility and attempted to live by those regulations. Mr. Hyland stated that if these were battered women, they would fall within the familial or social difficulty terminology. Mr. Ward agreed with Mr. Hyland that that was what the words said but the meaning applied to more than just a person from a broken home. He indicated that not everyone required care. Mr. Ward stated that they were doing what they could to abide. He mentioned that Bethany House had just rented an apartment to accommodate more people. Mr. Hyland stated that the battered women being served did have a specific need and did need special assistance. He indicated that he was basing his opinion on the experience he had with the women in his practice. He stated that the battered wives he had come into contact with had physical, emotional or familial difficulties. He asked Mr. Ward as to his understanding of the other kinds of persons that would not make this facility a group residential facility. Mr. Ward replied that he believed that the position of the Zoning Administrator was that irregardless of how the individuals were brought together, if four or fewere in number, then the criteria of what they were did not make any difference. Mr. Ward stated that he had gone a step further to just limit the facility to those individuals that did not require medical treatment or some kind of help.

Mr. DiGiulian inquired if the people served by the facility would come under the heading of familial or social difficulty. Mr. Ward stated that he could not define that. He stated that it was another aspect but the people at this facility did not require community assistance. Mr. DiGiulian inquired if the assistance given by Bethany House was not community assistance and would fall within the definition. Mr. Ward stated that it fell within part of the definition. Chairman Smith stated that the individuals were not alcohics or medical incompetents or mental cases. Basically, they were individuals down on their luck or having family problems. Chairman Smith stated that Bethany House had not accepted anyone who was an alcoholic or a mentally disturbed person. Mr. Hyland stated that some of the women that the facility would help probably would have a need for help to cope with problems. Mr. Ward had indicated that none of them would have emotional problems. Mr. Hyland stated that was a broad subject. He stated that the women would need to seek psychiatric help to get them through the difficult times. Mr. Ward stated that two staff persons, Janet White and Eve Beard, were trained as a medical nurse and a medical social worker but had not been hired for their capabilities. He stated that they were not asking medical supervision for anyone. They were just supervising the house and the volunteers and helped find other houses.

The next speaker in support of the Zoning Administrator was Mr. Lawrence Rosen who indicated that he was not affiliated with Bethany House. However, he lived in the community very close to the facility and had a family with three children. Mr. Rosen stated that this issue had been of major concern to his wife and him. In this issue, he dissented from the Buffalo Hills Citizens Association and fully supported the opinion of the Zoning Administrator. Mr. Rosen stated that he did so for physical reasons. He believed that the system had a tendency to overregulate the life of a private citizen. As a practical matter, the Zoning Administrator had shown a great deal of common sense in determining how significant the issues involved were when being done on a small scale. Mr. Rosen stated that in this instance, it was a very practical solution. Four individuals seemed like a very reasonable breakoff point. Looking at it as a concerned citizen, four unrelated persons was not causing sufficient concern to require regulation. There was not any adverse impact on the neighbors in any shape or form.

The next speaker in support was Dr. Robert Close, Pastor of John Calvin Presbyterian Church. He informed the Board that he was in favor of the Bethany House and the Zoning Administrator Bethany House was set up to help people who were hurt and victims of abuse. He stated that it was an institution of care and compassion. He stated that the volunteers cried with the people and cared for people who were hurt. Dr. Close had several comments about the type of people or the kinds of people. He stated that battered spouses existed all across society. Everyone fell into a category of need. It was his belief that the Wards and the churches deserved some sympathy from the BZA. He stated that they had not violated any Ordinance. The home did not serve more than four individuals. On one instance there was a woman with a child. Dr. Close stated that they needed to look at how to interpret the law.

389

The next speaker in support was Fred Waring of the Community Ministries of Fairfax County which was made up of 35 churches. He stated that over the past ten years they had been concerned with the quality of life in theCounty. The members of the support system were concerned for families and felt that Bethany House was an appropriate place. Mr. Waring stated that he hoped more places like Bethany House could be developed in the County. Mr. Waring stated that the reason he was at the meeting was to advise of the extra resources from Community Ministries which was available to the community.

Another speaker in support was Dr. Richard Stevenson, Chaplain of the Fairfax County Police Department. He stated that he had the responsibility of making sure that Bethany House met the requirements of the laws of the Commonwealth and the County. They had met the law with one exception which was the time five persons had occupied the property. Dr. Stevenson informed the Board that this facility was necessary and not only just this one but many more. Dr. Stevenson stated that the problem of battered spouses was widespread and very common. He stated that they needed more facilities, not less.

Another speaker in support was Mrs. Roseanne Hidden of 9101 Boulder Drive in Fairfax. She stated that she was a registered nurse and hospital administrator and a licensed nursing home administrator in Virginia. She was the past secretary, past vice-president and past president of the Northern Virginia Health Care Association. Mrs. Hidden was in favor of Mr. Yates. She informed the Board that she had been a battered wife. Her husband was a judge. She stated that there was a great need for Bethany House and she had not realized the need until 1980 when her friend needed help. Her friend's husband was an attorney. She had to flee her home and leave the children at home. Bethany House was a lovely home for a woman to rest and gather her thoughts and get on with living.

The next speaker in support was Mrs. Doris Ward who was the Executive Director of Bethany House. Mrs. Ward stated that some of the women coming to Bethany House needed to have transportation. That was one of the reasons this location had been selected as it was close to shopping. The women were not able to have cars or keep them up. Users of the facility came from all walks of life. Some were even neighbors. They came from a variety of circumstances. Some were wives of attornies, police officers, construction workers, persons on student visas, executives, etc. The women were working with the community and were asking for a decent place to live. Bethany House sought to dispel fears and monetary loss and to offer human concern to victims of abuse. They provided a safe place for anyone in the community. The problem of battered spouses was widespread and not one area was free from it. Mrs. Ward informed the Board that Bethany House was not equipped to handle alcoholics, drug addicts or emotional prople. The clients of Bethany House were well screened and were part of the Buffalo Hills community and surrounding communities.

The next speaker in support was Mrs. Grace Fordson, a resident of Castle Road. She stated that Bethany House was operated for human reasons and not for profit. She stated that during the cold winter night when she was thrown out with her baby, nobody would open the door to her. She had knocked at the front door of neighbors in nothing but her pajamas and her baby with only a blanket. They had gone to Bethany House without any clothes as her husband would not give her any clothes. Bethany House clothed her and the baby and gave them food. Mrs. Fordson stated that she was in full support of Bethany House.

There was no one else to speak in support. Mr. James E. Chappman, M.D. of Castle Road spoke in opposition. He stated that Mr. Konan would also speak. Dr. Chappman stated that this appeal was important to the entire County as these facilities were developing in all areas of the County. Dr. Chappman stated that there was only one issue which confronted the BZA. He indicated that he was indebted to Mr. Hyland as the issue was the interpretation of Sect. 2-502 as it related to group residential facilities. Dr. Chappman stated that he treated battered wives on a daily basis and they had a deep emotional problem. He stated that there was not any issue before the BZA except Sect. 2-502. Dr. Chappman asked all those persons in favor of the appeal to rise. Chairman Smith then asked all those in support of the Zoning Administrator to rise. There were more in support of the Zoning Administrator than of the appeal.

Dr. Chappman presented the Board with a tabulated document outlining his position in the appeal. Dr. Chappman stated that the Zoning Administrator had ruled that Bethany House was not a group residential facility based on the one time observation that four unrelated people were there. Dr. Chappman touched on the events leading to the appeal. On the 27th of November 1978, the Board of Supervisors adopted an amendment to Chapter 112 revising the limitations on the occupancy of dwelling units to add a paragraph to permit the use of a dwelling unit to be occupied by a group residential facility. Dr. Chappman stated that this was generated by the use of shelter houses and protective living arrangements and because of the Ravenwood Park Citizens Association appeal. In February 1981, Mr. and Mrs. Ward met with the Zoning staff and discussed the use of a single family dwelling for other than occupancy in the sense of paragraph 1 and 2 of Section 2-502. On March 9th, Mrs. Ward met with the citizens in Supervisor Davis' office and indicated that the center would provide a temporary home to care for adults, primarily women, and children accompanied by adults coming from destructive home situations, homeless, destitute people, and those returning from institutions. On November 1, 1981, there was a dedication ceremony for the center at Mt. Pleasant Church.

390

Dr. Chappman stated that following the ceremony, there was an open house held at Bethany House. He went there and met Ms. Jane White, a nurse who worked out of the Fairfax area. Dr. Chappman stated that he personally observed the eight beds distributed in the four sleeping rooms. On the 5th of December, the previous President of the Buffalo Hills Civic Association addressed the Zoning Administrator as to the nature of Bethany House. The Zoning Administrator replied with his opinion about Bethany House being four unrelated persons and not a group residential facility. Dr. Chappman stated that even assuming that Bethany House was four unrelated persons as suggested by Mr. Yates, why would four unrelated persons have incorporated themselves in Virginia, discussed the operation of a group residential facility with the Zoning Administrator and held a public meeting describing their activities and held inspections with the County and a dedication and an open house. He questioned why they would have undertaken a fund raising activity for just four individuals and why whey would solicit funds from several churches. In addition, Dr. Chappman inquired as to why this facility would be considered for a block grant if it was only for four individuals. Dr. Chappman stated that block grants had certain stipulations. Shelter activities needed financial support.

Dr. Chappman read the Article of Incorporation for Bethany House in which it stated that it would temporarily house adults, women and children and provide for the basis needs, etc. for eight residents at the facility with a staff of three. Dr. Chappman then read the definition of a group residential facility and argued that there was absolutely no distinction between the activities of Bethany House and the group residential facility paragraph which indicated that it was a dwelling unit which was used to provide assisted community living for persons with physical, mental, emotional, familial or social difficulties in which a maximum of eight persons receiving assistance reside. Dr. Chappman noted that the County did not set a minimum number for residents receiving community assisted living and he stated that it could be one, two, three or any number up to eight. Dr. Chappman stated that Bethany House was a group facility dedicated to rendering specific services to temporarily impaired people which fell into the definition of a group residential facility.

Dr. Chappman next discussed occupancy of a dwelling. He stated that Mrs. Ward had indicated on at least four occasions that she provided temporary shelter. She had said she provided care for temporarily, temporarily house, temporary shelter and temporary home in describing the clients' stay at Betheny House of Northern Virginia. Dr. Chappman stated that it was obvious and clear that none of the clients could be considered to be occupying the structure as a dwelling place.

Dr. Chappman showed the Board an advertisement which appeared in a bulletin for St. Anthony's which was seeking a mother-in-law type apartment to house several employees at Bethany House. Dr. Chappman stated that at least two or more of the employees lived elsewhere. Dr. Chappman stated that on his way to the public hearing, he had observed employees' cars parked in the driveway at 3014 Castle Road and he read off the license plates: Ohio CBH 203; New Jersey 918 HSK; California 593 PUH. Dr. Chappman stated that these employees could not be construed to be residents occupying Bethany House because of their out-of-state tags. He indicated that these cars come and go and that the employees had no intention of even residing in the State of Virginia let alone Fairfax County or 3014 Castle Road.

Mr. Hyland inquired as to how Dr. Chappman knew the out-of-state cars belonged to employees. He stated that just because they had out-of-state tags did not mean that they had no intention of residing in the State of Virginia. Dr. Chappman stated that several citizens lived in close proximity to Bethany House and passed it several times a day. He stated that the house was viewed almost on an hourly basis and the vehicles had been there almost consistently for five months. He understood that there was an Ordinance in the County which indicated that if an individual would be here more than 30 days or 90 days, where the car was garaged determined the place of residence. Dr. Chappman stated that it was the citizens' observation that the employees were coming and going on a shift basis on a daily basis and driving out-of-state cars. Dr. Chappman stated that he interpreted the advertisement for a mother-in-law suite and the employees who come and go as indicative of the fact that the employees were not to be occupying the dwelling for dwelling purposes.

Mr. Hyland inquired if Dr. Chappman knew who was living in the facility. Dr. Chappman stated that as of the 7th of January at 5:15 P.M., he saw one of the young ladies who had addressed the Board earlier with her child arriving on a school bus. There were at least two residents in Bethany House at 5:15 P.M. and three cars parked there with out-of-state licenses. Mr. Hyland stated that the fact that an out-of-state car was coming and going did not mean that the person driving the vehicle was not residing at the home. Dr. Chappman stated that he was trying to show that this was a transient facility occupied by transient people providing transient accommodations. Mr. Yaremchuk inquired as to how long the out-of-state cars were there. Dr. Chappman responded that they were there all day almost every day. Chairman Smith inquired if Dr. Chappman was familiar with reciprocity among states. Dr. Chappman stated that he was not an attorney but a POP--plain old physician. Chairman Smith stated that in the cases of military personnel, they were allowed to keep their home state tags on their cars as they travelled around through the country. Others were allowed reciprocity with the State of Virginia and some of the states mentioned by Dr. Chappman were in the group according to Chairman Smith. Chairman Smith questioned Dr. Chappman as to whether the people were actually living in the facility. Dr. Chappman stated that they were not living there which

391

was precisely his point. Chairman Smith inquired if they were working there and not living there. Dr. Chappman stated that the point of his argument was to show that these were transient people who were employed there by the Corporation to perform various services from time to time and from day to day and could not be construed to be occupying the dwelling in the sense of either paragraph 1 or 2 since they were not permanent or semi-permanent domicile at the address.

Mr. Hyland questioned where in the Zoning Ordinance it said anything that the person who resided on the premises had to reside there on a permanent basis & intended it to be his or her permanent domicile. Mr. Hyland stated that the Code stated "occupied" and did not state permanently reside or temporarily reside. He asked Mr. Chappman where he got the conclusion that permanency was implicit in the definition. Dr. Chappman read the definition from Article 20 of the Zoning Ordinance regarding a dwelling: "a building or portion, thereof, but not a Mobile Home, designed or used for residential occupancy. The term 'dwelling' shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for more or less transient occupancy." According to Dr. Chappman, a facility like Bethany House was excluded from being called a residence for occupancy purposes. He claimed that Bethany House was a transient facility in all of its aspects. Dr. Chappman stated that the clients could not be considered to be residents because they were temporarily quartered there. They lived elsewhere and had jobs elsewhere and could not legally be considered to occupy the dwelling as a residence. Mr. Hyland questioned what was temporary. Dr. Chappman stated that temporary would mean somewhat less than a year or so. He stated that the people had not established a bank account at a local bank, they had not changed their phone number or mailing address or they had not registered their cars. Dr. Chappman stated that there were certain requirements in establishing domicile. Mr. Hyland stated that it took two things to establish domicile even for a temporary period of time. One could be established immediately. Mr. Hyland stated that under the law, one was entitled to change his legal domicile if two things occurred. First, if one was actually present in a particular place and moved to somewhere else in another state and, second, if one intended upon reaching that other state that he was a legal resident of the new state, he was immediately domiciled for whatever period of time even temporary. Mr. Hyland stated that in the State of Virginia, an individual was considered to be a resident after six months for tax purposes. But domicile only required those things even if it was only for a temporary period. Mr. Hyland stated that if a battered woman left her home and went to Bethany House for a temporary period of time and intended to change to that facility and was physically there with the intent of it being her home, that was her new domicile. Dr. Chappman stated that the County Ordinance stated residential occupancy and not domicile.

Dr. Chappman stated that in his view he had established that the clients were transient and had no intent to establish permanent residence at the location. The employees were seriously in question because of advertisements looking for living quarters elsewhere rather than 3014 Castle Road. Dr. Chappman stated that there were at least three out-of-state cars seen in rotation at Bethany House. He next inquired if the corporation itself actually occupied 3014 Castle Road. Dr. Chappman stated that his exhibits would show that Bethany House, Inc. had an office at the John Calvin Presbyterian Church at 6531 Columbia Pike since November 1, 1981. Dr. Chappman stated that the clients were not in residence at 3014 Castle Road because they were temporarily housed the same as if staying at a motel, hotel or some type of temporary transient accommodation. The staff did not have the intent, desire or the actual taking up of residency at 3014 Castle Road. The corporate headquarters were not there and the Executive Agent, Mrs. Ward, did not reside there either. Dr. Chappman stated that no one occupied the dwelling at 3014 Castle Road in the sense of the Zoning Administrator's determination of the Code. No one had residency at the address. Dr. Chappman stated that he had shown that with respect to paragraph 2 of Sect. 2-502, he had shown that no one occupied the dwelling. Dr. Chappman stated that only left paragraph 3 to define what a group residential facility was and what Bethany House was which was a group residential facility.

Dr. Chappman informed the Board that with respect to the history of the Ordinance, it had been his understanding that four unrelated persons were not intended under the Ordinance to be living together under any sort of arrangement as it did not fit the definition of occupancy or a dwelling. Dr. Chappman stated that the Board of Supervisors had formed a new regulation for an entity which could occupy a dwelling not as a family but as a third separate entity and it had been based on the use and not on the numbers itself. Dr. Chappman stated that the Zoning Administrator stumbled over the concern that it did not set a minimum number. Dr. Chappman indicated that the wording was clear that it was for any number up to eight.

Dr. Chappman stated that the Zoning Administrator had clearly defined the use of the dwelling not for the occupancy of a family but for a new and novel use that required a permit of his authority under paragraph 3 of Sect. 2-502. Dr. Chappman stated that there was not any report from the Zoning Administrator as to the number of individuals he had counted, the time of day of inspection, etc. He stated that the Zoning Administrator had not specified who, what, when and where but the citizens had declared the facility to be a transient facility much like a hotel, motel or a medical care facility.

Dr. Chappman informed the Board that a group residential facility was a particular dwelling use separate and distinct from paragraph 1 of Sect. 2-502. It was separate in that it excluded and allowed a temporary shelter arrangement. Dr. Chappman stated that no person under paragraph 3 could be considered under paragraph 1 or 2. Dr. Chappman informed the Board that

the only appropriate action of the appeal would be to appeal the decision of the Zoning Administrator and place Bethany House in conformity as a group residential facility. Chairman Smith inquired if Dr. Chappman would have any objection to it being under a permit and he stated he would not. Dr. Chappman stated that Bethany House was a group shelter. To allow it as four unrelated persons was not the way the law should be carried out. Dr. Chappman stated that the facility had to be licensed from the State and he doubted whether the structure would meet the State requirements. Dr. Chappman stated that it was a risky and unsafe place. If it could meet the State standards and meet the requirements of a group residential facility, then the citizens would not have any problem with it. Dr. Chappman stated that there was not any intent on the part of the citizens to get rid of anyone. In fact, they had Dominion Psychiatric Center with 60 beds which was ten times bigger than Bethany House would ever be. The citizens only wanted it licensed under the law.

The next speaker was Ray Konan of 3122 Adrian Place. Mr. Konan stated that he was a citizen of the County in which the Zoning Administrator had made a mistake in applying the law of the County. The Zoning Administrator had indicated that Bethany House was merely four unrelated persons dwelling together. Mr. Konan stated that Bethany House fully met the definition of a group residential facility. Mr. Konan informed the Board that the people of the Mason District Council had voted unanimously to support the appeal as the definition of a group residential facility exactly fit the home of Bethany House at 3014 Castle Road. Mr. Konan stated that the terms were defended by law. Sect. 2-502 limited the occupancy of a dwelling to one family or a group or not more than four persons, or a group residential facility or a group housekeeping unit which required a permit from the BZA or the Group Residential Facility Commission. Mr. Konan stated that a group home was an institutional use of the property and was a group shelter. The Group Residential Facility has the authority to provide for such a use or occupancy at Castle Road.

Mr. Konan stated that Bethany House selected individuals for placement on their own terms and proposes its advertising as a shelter home. Mr. Konan stated that the definition of a group residential facility applied and the four person occupancy did not apply. However the Zoning Administrator had indicated that the four person occupancy did apply even though he had avoided all analysis of nighttime sleepers. Mr. Konan stated that Bethany House could increase its employees during the day as Mr. Yates did not want to be discrimatory. Mr. Konan informed the BZA that a family day care home or a home occupation would require a special permit. Mr. Konan went on to state that occupancy was not defined in the Code but was defined in Webster's Dictionary. He indicated that the definition fit Bethany House very closely.

In summary, Mr. Konan stated that when the Board of Supervisors acted on the language in the Code regarding group residential facilities, that nothing was changed in the four person occupancy language. The same meaning applied today. Mr. Konan stated that he had shown that the Zoning Administrator had errer and that the issue was very simple. He asked the BZA to check the category that fit best as there was nothing to make the appeal very complex or difficult.

Chairman Smith inquired as to how Mr. Konan distinguished between a corporate entity owning or leasing the property and allowing it to be used by an individual. Mr. Konan responded that if he leased a house in the County and hired somebody to conduct that property, he would go to the Zoning Administrator to seek a permit whether he incorporated or not. Chairman Smith stated that the Zoning Administrator had determined that residential property could be occupied if there was not more than four unrelated people occupying it. Chairman Smith stated that there was no specified amount of time to indicate how long a person would have to stay there. Mr. Konan argued that the definition of dwelling use did describe transient use. Chairman Smith inquired if Mr. Konan had information that Bethany House had charged anyone for staying overnight. If not, they were merely guests of the corporation.

During rebuttal, Mr. Hyland informed Mr. Yates that the one very hard issue was the definition of dwelling and whether this facility qualified as a dwelling. Mr. Yates stated that he had a strong position with the argument. He indicated that the facility was presently under the definition of dwelling and it included the term "and residential occupancy". Mr. Yates indicated that Sect. 2-502 allowed what could take place there. The facility may be occupied by no more than the following and he proceeded to read the limitations on occupancy. Mr. DiGuilian inquired if there were six individuals at Bethany House whether Mr. Yates would consider it to be a group residential facility. Mr. Yates responded that there was no question about it. Mr. DiGiulian stated that the type of use did fit into the definition of a group residential facility except for the number of four. Mr. Yates stated that he did not buy Mr. Ward's argument. He stated that the fifth member did create a violation or suggest that it was a group residential facility without a permit.

Mr. Yates informed the Board that he would yield on his rebuttal. He indicated that he would answer any questions if the Board had any. He stated that he was confident that he was on the same wavelength.

393

During the appellant's rebuttal, Dr. Chappman stated that Mr. Konan had already pointed out that no one occupied the dwelling at 3014 Castle Road. Bethany House leased the property from another party. It did not have an office there. Dr. Chappman stated that Bethany House was a transient house for impaired people. Dr. Chappman stated that the basis of the appeal was what do we mean by occupancy and what do we mean by residency. He informed the Board that if they accepted the definition, then no really occupied the dwelling in a residential sense. Dr. Chappman stated that the citizens did support the Ordinance and that it needed to be applied.

Mr. Richard Garrity questioned the interpretation of Mr. Yates as to number of four. He sta stated that they could operate a second facility where they could put less than four. Chairman Smith stated that Bethany House could operate a dozen such facilities throughout the County. He stated that the corporation would operate such a facility or as several group residential facilities.

Mr. Konan stated that Mr. Yates had referred to the intent of the Board of Supervisors to change the meaning of the four unrelated persons. Mr. Konan stated that there were not any documents that there was any intent to change that section. All documents were to the contrary according to Mr. Konan as included in Tab "H" of his presentation. Mr. Konan read off uses which were allowed under a permit and indicated that the Zoning Administrator should not be discriminatory. Chairman Smith stated that Mr. Konan was addressing uses that were not permitted by right. He indicated that Bethany House was not carrying on a use by residing at the dwelling. Mr. Konan argued argued that it went beyond that. Chairman Smith inquired as to what use was carried on there. Mr. Konan stated that the use was as described in the documents by Mr. and Mrs. Ward. It was a protective type home that was clearly not covered by the Board of Supervisors in the Ordinance. Mr. Konan stated that if he were to move out of his house and to run a facility for other people in need, such as delinquent teenagers, he would have no defense that he was a family just because he owned the property. Mr. Konan argued that anytime you started to do something other than living, by hiring employees indicated that you had taken yourself out of the family use and it becomes another use which requires a permit. Mr. Konan argued that the other use was a group residential facility.

Dr. Chappman informed the Board that he was a physician and had an employee. He stated that he had been issued a permit at 3023 Castle road for his office as well as his residence. Mr. Hyland questioned if Dr. Chappman allowed two patients to reside at his home whether he would be a group residential facility. Dr. Chappman responded that he would be because he would be providing a service. Chairman Smith queried whether Dr. Chappman could tell him where this facility was considered anything other than a purely residential use. He stated that the Board was now getting into a situation that the Code did not address. Dr. Chappman state that he had to have a permit for his office and Mr. Konan had to have a license for his business. Chairman Smith stated that a residential use was a right.

During rebuttal, Mr. Yates stated that he had been consistent with his present interpretation He had not presented any evidence behind his intent in Attachment 9 in the staff port. Mr. Yates stated that the whole matter had surfaced as a result of his response for a formal opinion.

At this point in the meeting, Chairman Smith closed the public hearing and announced that the Board would recess for lunch. At 1:30 P.M., the Board recessed and did not reconvene the meeting until 2:20 P.M.

Mr. DiGiulian moved that in Application A-81-M-014, the Board had made the following findings of fact: (1) that the four unrelated persons in the Ordinance was not intended to include this type of use. (2) that this use is exactly the type of use the Board of Supervisors intended to cover when they adopted Amendment no. 7 in the Ordinance. (3) that the definition of Group Residential Facility currently included this use; therefore, he moved that the Board overrule the Zoning Administrator and find in favor of the appellant. Mr. Yaremchuk seconded the motion.

During discussion of the motion, Mr. DiGiulian stated that he did not think anybody in the room had any problem with this particular use or to the work that they were doing but he felt very strongly that there should be some controls over the type of use and the Board of Supervisors thought that there should be some type of control. Mr. DiGiulian stated that he could not find anywhere in the Ordinance where the Group Residential Facility did not exist when there were less than four but did exist when more than four.

Mr. Yaremchuk stated that he supported this type facility because of the social problems but he did not feel that this type of use should go into a residential area with just the Zoning Administrator's approval without the neighbors knowing about it. He stated that the citizens did not have any idea of what was taking place. Mr. Yaremchuk stated that he felt the citizens did not object to it if it went through the permit use process and was a proper use in the community. Mr. Yaremchuk stated that it was arbitrary to go in any area at anytime.

Chairman Smith stated that he would vote against the motion because he felt that the Zoning Administrator's interpretation of the adopted Zoning Ordinance of Fairfax County was correct. In cases of this type, there were probably questions. He stated that the Zoning Administrato

394

had consistent interpretations and this was one that had been consistently upheld by the courts and the Board of Supervisors. Chairman Smith stated that he was of the opinion that this met the intent of the Ordinance.

Chairman Smith called for the vote on Mr. DiGiulian's motion to overrule the decision of the Zoning Administrator. The motion failed by a vote of 2 to 3 (Messrs. Smith, Hyland & Mrs. Day).

Chairman Smith called for an alternate motion. Mr. Hyland moved that in Application A-81-M-014, the Board of Zoning Appeals uphold the decision of the Zoning Administrator. He stated that he relied upon the report that the Zoning Administrator had give to the Board. Mr. Hyland stated that he believed that the Board had a case that although he listened with interest to Mr. DiGiulian's motion, this was a factual case and indications were that this type of facility did fit the definition of Group Residential Facility notwithstanding his discussion with Mr. Ward. Mr. Hyland stated that he also thought the BZA had a situation in which the other provisions of the Zoning Ordinance which talked to four persons that it was interesting to know and there had been a suggestion with respect to the Board of Supervisors but the Board did not know what they intended when you only have four persons. Mr. Hyland stated that he was persuaded by legislation in which the County took the position that when you have four persons or less, you do not have the issue of a Group Residential Facility. Mr. Hyland indicated that when faced with the two provisions of the Ordinance, he was inclined to support the position of the Zoning Administrator. Mrs. Day seconded the motion.

During discussion of Mr. Hyland's motion, Mr. DiGiulian stated that he wanted to refer to the court case. He stated that the way he read it, it was entirely different. There were six youngsters in the care of Social Services. Mr. Hyland responded that it was a more intense use. Mr. Hyland stated that, factually, there might be some differences but it referenced the number four. Mr. Hyland stated that the BZA had evidence in the file that the number four had some meaning. Mr. Hyland stated that he was the first to admit that the other sections of the Ord. gave the impression that you needed five before you need to file for a permit.

Mr. DiGiulian stated that in the reference court case, if the number four were in the case, then he would agree with Mr. Hyland but it was a totally different situation. Mr. Yaremchuk inquired as to what made four such a magic number. Chairman Smith stated that he was not aware that it was. Mr. Yaremchuk stated that it appeared to be so what made it so magic. Chairman Smith stated that it was only because of the wording in the Ordinance. Mr. Yaremchuk inquired as to the reasoning behind the number "four" in the Ordinance. Mr. Yates responded quite frankly that the Board of Supervisors felt that four persons unrelated had the same impact as a "family". He stated that the number four most approximated the typical size of a family in Fairfax County.

Chairman Smith called for a vote on Mr. Hyland's motion. The motion passed by a vote of 3 to 2 (Messrs. DiGiulian and Yaremchuk).

//

Page 394, March 9, 1982, Scheduled case of

11:00 A.M. CHILDREN'S WORLD, INC., appl. under Sect. 3-503 of the Ord. for a child care center for approx. 130 children, located E. side of Hunter Mill Rd., approx. 1,100 ft. N. of its junction with Chain Bridge Rd., R-5, Providence Dist., 47-2((1))pt. of 99, 1.0066 acres, S-82-P-003.

Mr. Grayson Hanes, an attorney in Fairfax, represented the applicant. Chairman Smith apologized for the delay in all of the cases following the appeal. He informed the meeting room audience that sometimes appeals took longer than the Board anticipated. Mr. Hanes informed the Board that Children's World had applied for a special permit for a child care center for 130 children. In addition, they were requesting waivers with respect to the transitional yard which they were no withdrawing. Mr. Hanes informed the Board that the Oakton Shopping Center was located nearby. He indicated that the subject parcel was at one time part of the Oakton Shopping Center and was zoned C-6. It was the retention pond and it had been phased out. It was never zoned in the commercial category but it was related and necessary for the operation of the entire center.

Mr. Hanes informed the Board that there were two churches and a Montesorri School nearby which had indicated their support to the special permit application of Children's World. Mr. Hanes stated that this application would allow for day care of the students who were not able to be taken care of after school.

375

395

Mr. Hanes informed the Board that the Planning Commission had heard the matter about ten days ago and after considering the land use problems, they were in support of the application The staffindicated that it was not in harmony with the Comprehensive Plan but the Planning Commission had disagreed with them. Mr. Hanes stated that this type of use was not a commercial use or a commercial activity. It was allowed in a residential area. In addition, it was not allowed anywhere in the commercial plan.

Mr. Hanes informed the Board that his client was the owner and operator of one of the fourth largest chain of child care centers in the United States. He was presently operating one center on Bauer Drive and had one under construction in Herndon. The building was designed to blend in with the residential neighborhood. The center would have 128 children.

One area of concern from the staff had been the traffic issue. Mr. Hanes stated that the traffic issue did not apply. For that reason, he suggested rewording condition no. 7 of the staff's recommendation after the second sentence to read: The southern most curb cut shall be deleted if an access easement is obtained. On the last sentence, he asked that it read: The applicant shall exercise good faith efforts to acquire an access easement to permit ingress via the existing curb cut on the shopping center site. Mr. Hanes informed the Board that they were going to try to get the access easement. He stated that they had run studies on the actual centers and there was not any backup on Hunter Mill Road.

In summary, Mr. Hanes stated that they had met every section of the Ordinance that was applicable. In response to questions from Mr. Hyland regarding the staff's recommendations, Mr. Hanes stated that they were in agreement with the conditions with the exceptions he had noted.

Mr. Mike Martin, a traffic researcher with BTI, Associates at Tysons Corner informed the Board that he had looked at the site on Hunter Mill Road and had looked at the traffic on Rt. 123 and Hunter Mill Road. They had recorded the levels of service at each of the intersections. The level of service would be D & E at Rt. 123 and Hunter Mill Road. The level of service at the Oakton Shopping Center was A which was considered excellent. Mr. Martin stated that in 1983 when the center would be operating, the level would remain A at the Oakton Shopping center and Hunter Mill Road and Rt. 123 would change to C in the morning and remain at E in the evening. Mr. Martin stated that the proposed child care center would be contributing a very small portion of traffic.

Mr. Martin addressed the access on Hunter Mill Road. He stated that it could be improved by widening. He stated that the location of the last Great Oakton Oak had moved the roadway further to the west. The applicants were proposing to widen and dedicate the site. With the Children's World facility in 1983 added to the traffic, it would remain the same with or without their development.

With respect to access to the facility, Mr. Martin stated that the two driveways were very similar to the facility now operating on Bauer Drive and that was what had been constructed throughout the County.

Mr. Hyland inquired of Mr. Hanes as to the transportation analysis that a sidewalk be provided. Mr. Hanes stated that they would agree to the sidewalk. He stated that it would not go anywhere but they would provide it if the BZA felt it was necessary.

There was no one else to speak in support of the application. There was no one to speak in opposition.Mr. Hyland stated that the Health Department indicated that 128 children was the maximum and the application listed 130. Mr. Hanes stated that 128 children was agreeable. The hours of operation would be 6:30 A.M. to 6:30 P.M. Mr. Hyland stated that the facility might have other functions which should be included in the hours.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-P-003 by CHILDREN'S WORLD, INC. under Section 3-503 of the Fairfax County Zoning Ordinance to allow a child care center for approximately 130 children, located east side of Hunter Mill Road 1,100 ft. north of its junction with Chain Bridge Road, tax map reference 47-2((1))pt. 99, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

RESOLUTION

396

1. That the applicant is the contract purchaser.
2. That the present zoning is R-5.
3. That the area of the lot is 1.0066 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Transitional screening 1, as required by and in accordance with the provisions of Article 13, shall be provided along the front, northern side lot and rear lot lines with a modification of five (5) feet along the front lot line to provide for the recommended sidewalk. The requirement for a barrier shall be waived except around the outside play area which shall be enlosed by a six (6) foot chain link fence.
7. Hunter Mill Road along the full frontage of the property shall be widened to provide a deceleration lane as shown on the development plan. The southern most curb cut shall be deleted if an access easement is obtained. The applicant shall exercise good faith efforts to obtain an access easement to permit ingress via the existing curb cut on the shopping center site.
8. Stormwater management measures and best management practices shall be implemented. At the time of site plan review, appropriate measures shall be required to mitigate the occurence of flooding/wet soils in the playground area.
9. The maximum number of students shall be 128, ages 1½ through 11 years.
10. The hours of operation shall be from 6:30 A.M. to 6:30 P.M., Monday through Friday, 12 months a year. In addition, other functions such as an open house and parent programs may be occasionally held on weekday evenings or weekends.
11. The number of employees will be limited to a maximum of 15 on the site at any one time to include a director and a cook.
12. The number of required parking spaces shall be 19 including one space for a handicapped person.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 0 with 1 abstention (Mr. Yaremchuk).

Page 396, March 9, 1982, Scheduled case of

11:15 A.M. COURT HOUSE COUNTRY CLUB OF FAIRFAX, INC., appl. under Sect. 3-103 of the Ord. to amend S-168-77 for country club to permit replacement of maintenance building destroyed by fire with a slightly larger metal building at a new location, located 5110 Ox Road, R-1, Springfield Dist., 68-1((1))17 & 18 & 20, 153.2074 acres, S-82-S-004.

As the required notices were not in order, the Board deferred the special permit until April 6, 1982 at 11:40 A.M.

//

Page 397, March 9, 1982, Scheduled case of

11:30 A.M. CHRISTIAN CENTER SCHOOL, formerly METROPOLITAN CHRISTIAN CENTER, appl. under Sect. 3-303 of the Ord. to amend S-236-76 for a private school of general education to permit continuation of the use without term, change in name of permittee, increase in max. number of students from 200 - 275, and change in hours of operation from 9 A.M. - 3 P.M. to 8:45 A.M. - 3 P.M., located 5411 Franconia Rd., R-3, Lee Dist., 81-4((1))66, 104,970 sq. ft., S-81-L-091.

Mr. Robert L. Fredericks of 7011 Cornwall Street in Springfield represented the applicant. He informed the Board that the purpose of the request was to continue the school. He stated that the school had existed for five years and they were seeking a renewal. Mr. Fredericks informed the Board that the school would be perpetual and they did not want any time limit. In addition, he stated that they had a change in name and would now be the Christian Center School. Mr. Fredericks stated that the school had been operating in compliance with the Ordinance since 1976. The Director of the school was Reverend Thomas McCauley. Mr. DiGiulian inquired if the school planned any additional parking and was informed they did not. Mr. DiGiulian inquired as to the ages of the students and was told the school had kindergarten through 12th grades. There were only 16 students in high school at the present time. Mrs. Day inquired if the school had the same operators and was informed that this was only a name change. The operators were still the same.

Rev. Thomas McCauley spoke in support of the application. He stated that the school term ran jointly with the Fairfax County system and ended in June. The reason for the change in name was not due to a change in philosophy. The school was incorporating and under the law of the Commonwealth, churches cannot incorporate. Rev. McCauley stated that there was another church in the area called Metropolitan Christian Community Church which would have the same initials so they had to take a different name.

Mrs. Day inquired if the school was going to paint its buses. Rev. McCauley stated that there would not be any change except an increase in students. There would not be any new buildings and everything would remain the same. Rev. McCauley stated that the Health Dept. had indicated that there would not be any objections to the increase in students as long as the toilets were separated and not used by the older students and as long as the day care enrollment did not 25 children under the age of 5 years for four hours or less at any one time.

There was no one else to speak in support and no one to speak in opposition.

Page 397, March 9, 1982 Board of Zoning Appeals
CHRISTIAN CENTER SCHOOL

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-81-L-091 by CHRISTIAN CENTER SCHOOL formerly Metropolitan Christian Center under Section 3-303 of the Fairfax County Zoning Ordinance to amend S-236-76 for private school of general education to permit continuation of the use without term, change in name of permittee, increase in maximum number of students from 200 to 275 and change in hours of operation from 9 A.M. to 3 P.M. to 8:30 A.M. to 3 P.M., located at 5411 Franconia Road, tax map reference 81-4((1))66, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-3.
3. That the area of the lot is 104,970 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless operation has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

RESOLUTION

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 275, kindergarten through twelfth grade provided that the rooms and toilet facilities used by the day care students are separated and not used by the older students and so long as the day care enrollment does not exceed twenty-five (25) children under the age of five (5) years for four (4) hours or less at any oen time.
8. The hours of operation shall be 8:45 A.M. to 3 P.M.
9. The minimum number of parking spaces shall be 98.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 398, March 9, 1982, Scheduled case of

11:45 A.M. JAMES R. McKAY, JR./NANCI K. McKAY, appl. under Sect. 18-401 of the Ord. to allow construction of a 13 ft. high detached garage on a corner lot, 3 ft. from a side lot line and 3 ft. from the rear lot line (12 ft. min. side yard and 13 ft. min. distance from rear lot line req. by Sects. 3-307 & 10-105), located 11024 Byrd Dr. R-3, Annandale Dist., 57-3((7))202, 15,616 sq. ft., V-82-A-004.

The Board was in receipt of a letter from the applicants seeking a withdrawal of the variance application. Mr. Yaremchuk moved that the Board allow the withdrawal without prejudice. Mr. Hyland seconded the motion and it passed by a vote of 5 to 0.

//

Page 398, March 9, 1982, Scheduled case of

12:00 NOON ROBERT A. CARPENTER, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 3.2 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 7513 Lauralin Pl., R-3, Lee Dist., 80-3((2))(56)23, 13,948 sq. ft., V-82-L-010.

Mr. Carpenter of 7513 Lauralin Place in Springfield informed the Board that due to the location of his house and the other buildings on the property as well as the topography of the lot, there was not any other place in which to construct a garage that would be in compliance with the Ordinance. Chairman Smith inquired if the applicant presently had a carport or a garage and was informed there was only a concrete slab. Mr. Carpenter stated that his house was about 25 years old. Mr. Hyland inquired as to the nature of the topographic problems. Mr. Carpenter responded that there was a hill and a very slopey area. In response to further questions from the Board, Mr. Carpenter stated that the house on lot 22 was bout 22 to 23 ft. from the property line. Mr. Hyland inquired as to what portion of the house was built 22 ft. from the line. Mr. Carpenter stated that the house next door was a rambler all on one floor. There was a living room with a bedroom. The house was totally exposed on the lower level and had a full basement with living space on top of it. Mr. Carpenter stated that his neighbor did not object to the variance.

There was no one else to speak in support of the application and no one to speak in opposition.

RESOLUTION

In Application No. V-82-L-010 by ROBERT A. CARPENTER under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 3.2 ft. from side lot line (12 ft. minimum side yard required by Sect. 3-307) on property located at 7513 Lauralin Place, tax map reference 80-3((2))(56)23, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 13,948 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has exceptional topographic problems. There is no other place on the property that the applicant could build a garage. In addition, the Board has not received any objections from any abutting property owner.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 399, March 9, 1982, Scheduled case of

12:10 P.M. ADDICOTT HILLS LIMITED PARTNERSHIP, appl. under Sect. 18-406 of the Ord. to allow deck to remain 13.5 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 9800 Thunderhill Ct., R-1, Dranesville Dist., 13-1((8))8, 23,580 sq. ft., V-82-D-011.

Mr. Gilbert Page, an engineer, represented the applicant who was out of town. Chairman Smith inquired if there had been a building permit issued for the construction of the deck. Mr. Page responded that the deck had been built without a building permit. When the developer found out that he needed a building permit, he applied for one and then found out that he needed a variance. The developer was Addicott Hills Limited Partnership and this was his first probject. Chairman Smith stated that the BZA had a problem with granting a variance without a building permit having been applied for. He inquired if Mr. Page had read Section 18-406 of the Ordinance and was familiar with the requirements. Chairman Smith inquired if someone was living in the house. Mr. Page responded that the house was for sale and was totally unoccupied. Mr. Page explained to the Board that the developer had constructed the deck onto the house and had asked his engineering firm to revise the grading plan to show the deck.

Mr. Hyland inquired as to how the mistake had occurred. He asked if it was Mr. Page's testimoney that the developer did not have any knowledge that he needed a building permit and was not aware of the setback requirement. Mr. Page stated that he believed the developer was aware of it but this was his first project in this County as the developer was from Iran. He had obtained a building permit for the construction of the house. Mr. Page stated that none of the houses had decks. Apparently, the people expressed an interest in purchasing decks along with the houses. The developer found but later that he had to have a separate building permit for the deck. Chairman Smith inquired if there were other houses in which the developer had built decks without a building permit. Mr. Page responded that there were two others but this was the only one that was in violation of the setback requirement.

Mr. Yaremchuk stated that he felt the BZA should postpone the hearing and allow the developer to learn the Code. He inquired as to who had staked out the house. Mr. Page stated that at the time the house was staked out, there was not a grading plan or deck there. Mr. Yaremchuk stated that he did not like the way in which this was handled. He

moved that the BZA defer the application until the developer came back from out of town.

A gentleman representing his brother-in-law who owned the property next door to the one in question, informed the Board that he was opposed to the variance as there may be some cloud over the property if the variance were granted. He informed the Board that he had always made every effort to obtain the proper permits and felt there was an injustice in this case. He stated that he had been waiting for the hearing to take place for four hours and the applicant was in California. The gentleman objected to the postponement. He stated that the question his brother-in-law had was whether there would be a cloud on his property that would hinder the sale of the lot. The gentleman stated that there needed to be some justification for causing people so many inconveniences.

Chairman Smith stated that the applicant was not required to be present as he had an agent to represent him. However, the agent had not staked out the deck. Mr. Hyland inquired if the gentleman opposed the location of the deck. The gentleman stated that he was not really opposed to the deck, only the principle of the situation. Mr. Hyland informed the gentleman that there would not be any cloud on the adjoining property if the variance were granted as there was not any connection with it.

There was no one else to speak in opposition. The vote on the motion to defer passed by a vote of 5 to 0. It was the consensus of the Board to defer the matter until March 23, 1982 at 8:30 P.M. for the builder to be present to tell the BZA why he located the deck without applying for a building permit.

//

Page 400, March 9, 1982, Scheduled case of

12:20 P.M. ST. LOUIS CATHOLIC PARISH & ELEMENTARY SCHOOL, appl. under Sect. 3-203 of the Ord. to permit addition of a multi-purpose gymnasium to existing church, school of general education, and related facilities, located 200 N. Glebe Rd., R-2, Mt. Vernon Dist., 93-1((1))6, 15.72 acres, S-82-V-005.

As there was a question on notices, the Board discussed the deficiency. Mr. Hyland moved that the Board proceed with the hearing. Mr. Yaremchuk seconded the motion and it passed by a vote of 4 to 1 (Mr. Smith).

Mr. Endicott represented the church. He informed the Board that this was an application for an addition to the current St. Louis School. There were sufficient parking spaces. The school had been in existence for the past 25 years. There are about 400 students. The gymnasium would be used in the evening for parish activities. Mr. Endicott stated that the gymnasium would be used for school uses and sports activities.

Father Murphy spoke in support of the application. He stated that the addition was a simple structure and would not have any bleachers in it. There was a small stage for concerts which would be used during the day by the school. There were 351 parking spaces and Father Murphy stated that the parking would not be increased. If the gymnasium was used at night, there was no need for additional parking as the facility would not hold that many people. The gymnasium would be used for parish dances and potluck suppers. At the present time, the children had to use the cafeteria for gym activities which could not be scheduled during the lunch period.

There was no one else to speak in support and no one to speak in opposition.

Page 400, March 9, 1982 Board of Zoning Appeals
AT. LOUIS CATHOLIC PARISH & ELEMENTARY SCHOOL

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-82-V-005 by ST. LOUIS CATHOLIC PARISH & ELEMENTARY SCHOOL under Section 3-203 of the Fairfax County Zoning Ordinance to permit addition of a multi-purpose gymnasium to existing church, school of general education and related facilities, located at 2901 Popkins Lane, tax map reference 93-1((1))6, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-2.
3. That the area of the lot is 15.72 acres.
4. That compliance with the Site Plan Ordinance is required.

401

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 400 with a faculty of 18.
8. The hours of operation shall be normal hours of church and school activities.
9. The number of parking spaces shall be 351.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 401, March 9, 1982, Scheduled case of

12:40 P.. FRANKLIN T. & JOHANNA M. SHIPPEN, appl. under Sect. 18-401 of the Ord. to allow construction of solarium entrance room addition to dwelling to 17 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207), located 7721 Tauxemont Rd., R-2, Mt. Vernon Dist., 102-2((8))12, 25,167 sq. ft., V-82-V-012.

Mrs. Johanna Shippen informed the Board that they wanted to enclose a section of the solar entrance inside of the old covered porch. Mrs. Shippen stated that there had been a roof and they wanted to improve it. This would have a southern exposure and would be very useful to them. In response to questions from the Board, Mrs. Shippen stated that the dimensions of the porch were 7'x19'. They were proposing to build it 8'x22'. Mr. DiGiulian stated that there was very little difference. Mr. Yaremchuk inquired if the original porch had met the setbacks. Mrs. Shippen stated that between the lot line and the curb was another 11 ft. Chairman Smith inquired again as to the type of porch and was informed it was a covered open porch. Chairman Smith stated that this was a one-story addition and not a porch. He inquired as to when the open porch had been removed and Mrs. Shippen replied two years ago. Chairman Smith asked why the porch had been removed. Mrs. Shippen stated that the roof was totally rotten and flat. Chairman Smith inquired as to the size of the addition and was informed it was 8'x22'. Mrs. Shippen stated that the concrete pad was 7'x19'. Mrs. Shippen stated that the 8'x22' would be more pleasing. She informed the Board that her architect lived next door.

There was no one else to speak in support and no one to speak in opposition.

Page 401, March 9, 1982 Board of Zoning Appeals
FRANKLIN T. & JOHANNA M. SHIPPEN
RESOLUTION

In Application No. V-82-V-012 by FRANKLIN T. & JOHANNA M. SHIPPEN under Section 18-401 of the Zoning Ordinance to allow construction of solarium entrance room addition to 17 ft. from front lot line (35 ft. minimum front yard required by Sect. 3-207), on property located at 7721 Tauxemont Road, tax map reference 102-2((8))12, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

402

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 25,167 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property. It appears that the house was closer to the street at the time in 1949 and they could have built a porch without a variance which they did. This is the only place to put this type of entrance. This addition is to replace a 7'x19' porch with an 8'x22' room addition.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 402, March 9, 1982, Scheduled case of

1:00 P.M. GARY S. IBACH, appl. under Sect. 18-401 of the Ord. to allow construction of a greenhouse addition to dwelling to 9 ft. 7 in. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 4010 Elizabeth Ln., 58-4((8))100, R-1, Annandale Dist., 21,750.01 sq. ft., V-81-A-225. (DEFERRED FROM 1/12/82 & 2/11/82 FOR DECISION ONLY OF FULL BOARD).

Chairman Smith asked the Board for some direction in this matter as any action taken would be incumbent upon the applicant to submit a new plat. Mr. Hyland stated that his inclination was to have the plat redone and submitted to the Board and make a decision at that time. Mr. Hyland moved that the Board defer the decision for a period of one week to allow the applicant an opportunity to submit the revised plat. The variance was deferred until March 23, 1982 at 8:45 P.M.

//

Page 402, March 9, 1982, Scheduled case of

1:10 P.M. CHILDREN'S WORLD, INC., appl. under Sect. 3-103 of the Ord. for a child care center (approx. 128 children), located intersection of Oak St., (Rt. 769) and Arden St., (Rt. 3450), 39-4((1))pt. of 108A, Providence Dist., R-1, 44,493 sq. ft., S-81-P-073. (DEFERRED FROM 2/11/82 TO GIVE BOARD MEMBERS AN OPPORTUNITY TO VIEW THE PROPERTY AND FOR DECISION OF FULL BOARD, AND FROM 2/23/82 FOR DECISION OF FULL BOARD).

Chairman Smith inquired if the Board was prepared to make a decision in this case. He stated that he had reviewed the tapes and would participate in the vote if it was required.

403

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-81-P-073 by CHILDREN'S WORLD, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to permit child care center for approximately 128 children, located at intersection of Oak Street and Arden Street, tax map reference 39-4((1))pt. 108A, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 9, 1982; and

WHEREAS, theBoard has made the following findings of fact:

1. That the applicant is the contract purchaser.
2. That the present zoning is R-1.
3. That the area of the lot is 44,493 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering changes) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of students shall be 128, ages 1½ through 11 years.
8. The hours of operation shall be 6:30 A.M. to 6:30 P.M., Monday through Friday.
9. The number of parking spaces shall be 19.
10. There shall be a maximum of 15 employees.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith) with 1 abstention (Mr. Yaremchuk).

Page 403, March 9, 1982, Scheduled case of

1:30 P.M. SOUTHERN IRON WORKS, INC., appl. under Sect. 18-401 of the Ord. to allow the erection of overhead crane runway and cover to front property line (40 ft. min. front yard req. by Sect. 5-607), located 6600 Electronic Dr., Shirley Industrial Park, 80-2((1))33, Annandale Dist., I-6, 5.75 ac., V-81-A-195. (DEFERRED FROM FEBRUARY 23, 1982).

Mr. William Donnelly of 4069 Chain Bridge Road represented the applicant. He explained to the Board that the applicant was seeking a variance to extend the crane runway to the property line. They believed that the variance was justified as the lot was very unusually shaped. Second, over the years before the current Ordinance was adopted, the facility had been legally constructed up to the property line so that it had become the setback line. The crane runway was desired close to the property line in order to serve the shops along the property line. Mr. Donnelly stated that denial would be an undue hardship and because of the yard requirements would serve no useful purpose because Iron Place could not be widened. Mr. Donnelly stated that he believed the hardship was unique as they were the only

triangular lot with roads on three sides. Mr. Donnelly stated that the neighbors were all industrial. The subject property was zoned I-6. Mr. Donnelly stated that he was unaware of any opposition.

There was no one else to speak in support and no one to speak in opposition.

Board of Zoning Appeals

RESOLUTION

In Application No. V-81-A-195 by SOUTHERN IRON WORKS under Section 18-401 of the Zoning Ordinance to allow erection of overhead crane runway and cover to front property line (40 ft. minimum front yard required by Sect. 5-607) on property located at 6600 Electronic Drive, tax map reference 80-2((1))33, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is I-6.
3. The area of the lot is 5.75 acres.
4. That the applicant's property is exceptionally irregular in shape being triangular and has an unusual condition in that the interior streets should not require setback. This was built prior to Electronic Drive being taken into the state system. It is actually an interior driveway and not a public street as defined under the Ordinance. The building setback therein has existed since 1954. This is an unusual situation as this type of variance used to be handled administratively.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith) with 1 abstention (Mr. DiGiulian).

Page 404, March 9, 1982, After Agenda Items

Reconsideration of denied variances of Albert Raithel and Batal Builders, Inc: Mr. Yaremchuk stated that he felt the BZA had the right to reconsider the applications. He stated that he knew the Board of Supervisors did that. Mr. DiGiulian stated that in the past the BZA had reconsidered applications, sometimes at the request of the Board of Supervisors. Chairman Smith stated that he did not deny that the BZA had reconsidered applications previously but the memorandum from the County Attorney's Office indicated that they had no right to do it. Mr. Hyland stated that he wanted an opportunity to talk to the County Attorney's Office on this matter.

//

Page 405, March 9, 1982, Executive Session

At 4:50 P.M., the Board convened into an Executive Session to discuss the memorandum from the County Attorney regarding reconsideration of denied cases. At 5:55 P.M., the Board reconvened into public session.

//

Page 405, March 9, 1982, After Agenda Items

Reconsideration of Albert Raithel and Batal Builders, Inc.: Chairman Smith suggested that the Board move to deny the requests. He stated that he agreed with the County Attorney's memorandum and felt that the Board should take the position of denying the request for reconsideration based on the opinion of the County Attorney.

Mrs. Day stated that with respect to the letters requesting reconsideration of the variances which were denied on October 6, 1981, she moved that the Board not reconsider the denial for the reason that the Board had heard all of the testimony and made its decision and also because of the opinion of the County Attorney. Mrs. Day stated that she did not think any further hearing was necessary. Mr. Hyland seconded the motion for discussion purposes only. He stated that the applicants had requested reconsideration but based on the County Attorney's memorandum, the applicant did not have that right unless twelve months had expired. Mrs. Day stated that the bottom line was that the BZA heard the cases and had made its decision. The vote on the motion to deny reconsideration passed by a vote of 3 to 2 (Messrs. DiGiulian and Yaremchuk).

//

Page 405, March 9, 1982, After Agenda Items

Donald L. Simpson: The Board was in receipt of a letter from Mr. Hohein regarding the variance of Donal L. Simpson which had been deferred by the BZA until May 25, 1982 to allow the applicant an opportunity to clear the violation. Mr. DiGiulian stated that he felt the action taken by the BZA had been proper. A period of time had been given to clear the violation. The Board had given the applicant until May 25th. He stated that the BZA would be creating a problem if it did anything prior to May 25th. The next step following that date would be up to the Zoning Administrator if Mr. Simpson had not cleared the violation.

Mr. Hyland stated that he had asked for a transcript and had asked that Mr. Hohein be given an opportunity to respond to the affidavit. Mr. Hyland stated that it appeared that was one of the major sources of complaint Mr. Hohein had that he was not given the opportunity to respond at the last hearing. Mr. Hohein felt that he should have been allowed to speak at the meeting. Chairman Smith stated that the Board had restricted the use of the property in another way. Chairman Smith requested that the BZA receive a copy of the Zoning Enforcement report prior to the May 25th hearing.

//

Page 405, March 9, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for April 22, 1980 and April 29, 1980. It was the consensus of the Board to approve the Minutes as written.

//

Page 405, March 9, 1982, After Agenda Items

Patricia & John Juliano: The Board was in receipt of request for an out-of-turn hearing on the variance application of Patricia & John Juliano. It was the consensus of the Board to grant the request and the hearing was scheduled for April 13, 1982.

//

Page 405, March 9, 1982, After Agenda Items

Frances Craighill, V-80-D-127: The Board was in receipt of a request for an extension of the variance granted to Frances Craighill, V-80-D-127. Mrs. Day moved that the Board grant a six month extension. Mr. Hyland seconded the motion and it passed by a vote of 5 to 0.

//

Page 405, March 9, 1982, After Agenda Items

Frances Batchelder, Burke Centre Day School: The Board was in receipt of a request from Frances Batchelder regarding an extension of the special permit for Burke Centre Day School which had expired on January 30, 1982. The Clerk was directed to advise Mrs. Batchelder that she had to refile her application and go through a public hearing all over again.

//

Page 406, March 9, 1982, After Agenda Items

Fox Mill Swim Club: The Board was in receipt of a letter seeking clarification on the BZA resolution for Fox Mill Woods Swim Club. It was the consensus of the Board to defer the letter to the Zoning Administrator to answer as he so desired.

//

406

page 406, March 9, 1982, After Agenda Items

The Board was in receipt of a letter from Mr. Barry Sherbal addressed to Judge Jennings regarding the delay in the BZA meeting of February 11, 1982. The Clerk was directed to write a response to Mr. Sherbal apologizing for the delay and explaining the circumstances. A copy of the letter was to be forwarded to Judge Jennings.

// There being no further business, the Board adjourned at 6:20 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith
Daniel Smith, Chairman

Submitted to the Board on Sept. 13, 1983

Approved: Sept. 20, 1983
Date

407

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 16, 1983. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Ann Day and Gerald Hyland. Mr. Yaremchuk was absent.

The Chairman called the meeting to order at 10:26 A.M. and Mrs. Day led the meeting with a prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. MARVIN D. & JEAN TOOMBS/SEATCO OF ARLINGTON, appl. under Sect. 18-401 of the Ord. to allow automobile oriented use (automotive upholstery) with portions of driveways and parking spaces having gravel surface (dustless surface req. by Sect. 11-102), located 5714 Center Ln., 61-2((20))17A, Mason Dist., C-8, 19,039 sq. ft., V-81-M-199. (DEFERRED FROM 12/15/81 AND 2/2/82 FOR NOTICES.)

The Chairman informed the Board members that again the notices were not in order. Mr. DiGiulian made a motion to dismiss the case due to lack of interest. Mr. Hyland seconded the motion and it was a unanimous vote.

Page 407, March 16, 1982, Scheduled cases of

10:10 A.M. FATHY ABOUZIED, appl. under Sect. 3-103 of the Ord. for a home professional office (accounting, bookkeeping & tax services), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., S-82-A-001. (DEFERRED FROM 2/2/82 TO ALLOW TIME TO SUBMIT ADDITIONAL INFORMATION)

10:20 A.M. FATHY ABOUZIED, appl. under Sect. 18-401 of the Ord. to allow home professional office on a lot which has area of 33,312 sq. ft. and width of 110 ft. (36,000 sq. ft. min. lot area and 150 ft. min. lot width req. by Sect. 3-106) and having gravel surface driveway and parking spaces (dustless surface req. by Sect. 11-102), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., S-82-A-001. (DEFERRED FROM 2/2/82 TO ALLOW TIME TO SUBMIT ADDITIONAL INFORMATION)

Mr. Jeffrey Silverstein, an attorney, represented the applicant. He stated that he would like to have the case deferred until there was a full Board present.

Mr. Hyland made a motion that the matter be deferred. Mr. DiGiulian seconded the motion. The Chairman indicated that there were several people in attendance that wanted to speak in opposition and thought a night meeting would be a better time for them. He asked for any speakers with any thoughts about deferring the case.

The first speaker was Leonard Carter, 4208 Whitacre Road, Fairfax, an immediate neighbor of Mr. Abouzied. He stated that speaking for the group, they were opposed to the variance. He stated that they had been here twice already and if the applications were going to be deferred again, they would like a chance for a night meeting.

Mr. Hyland amended his motion to say that the matter be deferred to the next available night meeting at the request of the citizens. Mr. DiGiulian seconded the motion.

The Chairman inquired if the business was in operation. Mr. Carter answered that Mr. Abouzied was already operating his office out of his home. He stated that he thought there was a permit issued some time ago, but that the growth of the office made it mandatory for a special permit. Mr. Covington stated that a home occupation letter had been issued specifying no clients, no employees and a bonafide residence of the applicant.

Mr. Hyland inquired if the applicant resided in the home. Mr. Carter answered that the applicant had living facilities at this address and also at another residence a couple of blocks away that he was attempting to sell. He had the intention to move to this property on Whitacre Road after the sale of his house. Mr. Carter stated that Mr. Abouzied was not living in this residence on a full-time basis.

Mr. Hyland stated that his understanding was that in order to approve this application, the structure must be the domicile of the person making the application. If that is not the case, the Board does not have the authority to grant the application. Mr. DiGiulian stated that he thought they could hear a request if the applicant intended to move there. He stated that he did not feel the applicant had to live there prior to special permit approval.

Mr. Hyland stated that he wanted representation that the applicant would be living there while operating his business.

It was the consensus of the Board to defer the above referenced cases to April 27, 1982 at 8:30 P.M.

Page 408, March 16, 1982, Scheduled case of

10:30 A.M. PIERRE RICHARD CHAN-LOK, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 7312 Bath St., R-3, Springfield Dist., 80-3((2))(34)24, 10,720 sq. ft., V-81-S-235. (DEFERRED FROM 2/2/82 FOR NOTICES).

The Chairman stated that the notices were not in order for the second time. It was the consensus of the Board to give the applicants one more chance to accomplish the notification procedure. If the notices are not in order for the next hearing date, the case will be dismissed. The case was deferred to May 4, 1982 at 10:00 A.M.

Page 408, March 16, 1982, Scheduled case of

10:40 A.M. BURKE CENTER ACADEMY AND DAY CARE CENTER, appl. under Sect. 3-103 of the Ord. for a private school of general education and child care center, located 6215 Poburn Rd., R-1, Springfield Dist., 77-4((1))10, 2.5 acres, S-82-S-006.

(FOR TESTIMONY REGARDING THIS CASE, PLEASE REFER TO THE VERBATIM TRANSCRIPT ON FILE IN THE CLERK'S OFFICE.)

Page 408, March 16, 1982 Board of Zoning Appeals
CLAUDE A. & BETTY WHEELER T/A
BURKE CENTER ACADEMY AND DAY CARE CENTER

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-S-006 by CLAUDE A. & BETTY WHEELER T/A BURKE CENTER ACADEMY AND DAY CARE CENTER under Section 3-103 of the Fairfax County Zoning Ordinance for a private school of general education and child care center, located at 6215 Poburn Road, tax map reference 77-4((1))10, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 2.5 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

Page 409, March 16, 1982
CLAUDE A. & BETTY WHEELER T/A
BURKE CENTER ACADEMY AND DAY CARE CENTER
(continued)

R E S O L U T I O N

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be a maximum of 200 children.
8. The ages shall be 18 months to 7 years.
9. The hours of operation shall be 6:00 A.M. to 7:30 P.M. Monday thru Friday.
10. The number of employees shall be limited to 22.
11. The number of parking spaces shall be 21 as shown on the plat. An additional parking bay on the north side of the proposed parking lot shall be provided yielding nine additional parking spaces.
12. A revised plat shall be provided showing the parking spaces provided by this permit as well as a designated parking space for a handicapped person as agreed upon by the Office of Design & Review.
13. Adequate screening shall be provided on the southern lot line abutting lot 11. Said screening is to be approved by the Department of Environmental Management.
14. A right turn deceleration lane meeting VDH & T standards shall be constructed by the applicant.
15. At such time as either of the adjacent parcels is developed with the additional planned lanes on Roberts Parkway, this applicant shall provide additional lanes along the frontage of this site within the 110 ft. right-of-way.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Yaremchuk being absent)

Page 409, March 16, 1982, Scheduled case of

11:00 A.M. DANIEL P. & GLORIA S. BOHAN, appl. under Sect. 18-401 of the Ord. to allow construction of dwelling to 12 ft. from proposed edge of pavement of a pipestem, and to allow 17.3 ft. high dome cover over swimming pool to remain 2.6 ft. from rear lot line (25 ft. min. front yard req. by Sect. 2-416, and 17.3 ft. min. distance from rear lot line for accessory structure req. by Sect. 10-105), located 1129 Crest Ln., R-1, Dranesville Dist., 22-4((1))31, 36,000 sq. ft., V-82-D-002.

The first speaker was Howard Simmons, of Paciulli, Simmons and Associates in Vienna, who represented the applicants. He stated that he had a drawing and a model to show the Board some of the unusual characteristics of the property. The model is a scale model showing that the property has very steep topography. The driveway is approximately 10% and the backyards vary from 25 - 50 %. The project is heavily wooded and there are several large specimen trees. He stated that the Board had a copy of a map labeling several of the large specimen trees that were located for the architect in order to save as many as possible. Due to the steep topography, there is a very limited area that will support septic fields. The septic field is placed on the flat part of the lot. The existing driveway goes through the property and serves another house. Mr. Simmons stated that in 1959 the pool and the pool filter facility were installed under two separate permits. In 1960, the owners got a permit to erect a pool cover to keep leaves out of the pool. He stated that the setback distances were acceptable under the old Ordinance. Under the current Ordinance, this portion of the property is a back yard.

Mr. Simmons stated that this property has two front yards and two rear yards. The driveway services only one other property. The owner of that property, Mr. Saverese, sold this property to the Bohans and has written a letter of support. Mr. Simmons stated that none of these conditions is the result of the applicant. He felt that to deny the variance would deny the owners reasonable use of their property.

There was no one to speak in support and no one to speak in opposition to the request.

Page 409, March 16, 1982 Board of Zoning Appeals
DANIEL P. & GLORIA S. BOHAN

R E S O L U T I O N

In Application No. V-82-D-002 by DANIEL P. & GLORIA S. BOHAN under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 12 ft. from proposed edge of pavement of a pipestem, and to allow 17.3 ft. high dome cover over swimming pool to remain 2.6 ft. from rear lot line (25 ft. min. front yard req. by Sect. 2-416), and 17.3 ft. min. distance from rear lot line for accessory structure req. by Sect. 10-105), on property located at 1129 Crest Lane, tax map reference 22-4((1))31, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

410

RESOLUTION

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 36,000 sq. ft.
4. That the applicant's property is exceptionally irregular in shape. Due to resubdivision, it places an easement on the property. This applicant's property has an exceptional topographic problem of steep layers. There will be an unusual condition of the location of the proposed building on the property. The property has limited area for a septic field. There is a necessity for the cover over the pool to eliminate accumulation of leaves.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Yaremchuk being absent)

// Mr. DiGiulian left the meeting at 2:10 P.M.

Page 410, March 16, 1982, Scheduled case of

11:15 A.M. E & Z LIMITED PARTNERSHIP, appl. under Sect. 18-401 of the Ord. to allow a sign for five (5) individual enterprises within shopping center, to be erected on existing facia at arcade entrance, located 8365 Leesburg Pike, C-7, Centreville Dist., 29-3((1))36, 36A, 36B, 36C & 36D, 9.3059 acres, V-81-C-240. (DEFERRED FROM 2/9/82 FOR NOTICES)

The Chairman indicated that there were only three Board members present and it would take a unanimous vote to grant the application. The applicant's representative decided to proceed with the hearing.

Mr. William Naylor, 7761 Clifton Road, Fairfax Station, Virginia, represented the applicant. He stated that this application was for the Pike-7 Shopping Center. The proposed sign would be 15 x 10, which is the existing facia over the top of the arcade. The letters would be placed on the existing facia and there would be no new sign erected. He stated that the only other place the business names were displayed was in the arcade area. The business names could not be seen from the street or from the parking spaces at this time.

Mr. Hyland asked if Mr. Naylor had seen the staff report. In a letter from Mr. Shoup, a zoning inspector, it indicated that the allowable sign space was 46 1/2 sq. ft.. Since the size of the sign being asked for is 142 sq. ft. a sign permit could not be approved. Mr. Hyland asked what Mr. Naylors position was on this. Mr. Naylor replied that that was for a new sign. He decided to go ahead and use the existing facia which has been that size for over ten years.

The Chairman stated that the Board should address what is the allowable space that could be used, and that is 46 sq. ft. Mr. Naylor stated that the Ordinance stipulates that with reference to the architectural front of the building, that which you egress and ingress, that you may have 1 1/2 or 1.5 per foot. The total distance of the buildings in the arcade are 105 ft. times 1.5 , and that is a little more than the existing facia.

Mr. Hyland indicated that in the staff report it suggested the allowable sign space is not considered on the facia. It is not considered similar to space which is available if it was treated as individual store frontage. The staff report suggests that this is not store frontage, this is on the side so, therefore, they would not permit the size of the sign being suggested. In effect, you can't use the frontage requirements to justify the size of the sign for five businesses.

The next speaker was William Shoup, a Fairfax County Zoning Inspector. Mr. Hyland asked him about a letter he had written that was included in the staff report. The letter indicated that the size of the sign requested by the applicant would exceed the size of a size that would normally be permitted in that location. Mr. Shoup stated that the requested sign would be in excess of 142 sq. ft. He stated that he based his decision on the frontage available for the arcade shops. This is where he came up with 31 linear feet. The frontage of each individual shop was not used. The allowable sign space was based on the facade frontage leading back to the arcade shops.

Mr. Hyland asked Mr. Shoup if that was an exact requirement in the Ordinance or if there was any flexibility in determining what frontage could be used in determining the size of the sign. Mr. Shoup stated that based on the Zoning Ordinance definition, you must measure the one face or wall and establish it as the building front. He stated that if the frontages of each shop were used, the applicants would have enough front to obtain the sign they requested. Mr. Hyland inquired if the entranceway to the mall has always been used as the starting point of measuring. Mr. Shoup stated that this is a unique situation in terms of a sign for an arcade shop, and this is the first time he had come across this situation in his district. He stated that he reached his conclusion that this is the manner in which the size of the sign should be calculated by consulting his supervisors and looking at background material from a similar situation at Pan Am Shopping Center.

Mr. Hyland stated that this case raises an interesting question as to what standards to apply for measuring store frontage. He made a motion to defer the case to March 30, 1982 at 11:30 A.M. to give the Board members time to look at other sign permit variances that had been granted.

Page 411, March 16, 1983, Scheduled case of

11:30 A.M. RESTON INTERFAITH HOUSING CORPORATION, appl. under Sect. 3-103 of the Ord. to amend S-197-74 for child care center to permit change of permittee and hours of operation from 7:00 A.M. - 6:30 P.M. to 7:00 A.M. - 7:00 P.M., located 12100 Sunset Hills Rd., R-1, Centreville Dist., 17-3((1))pt. 1, 2.1677 acres, S-82-C-007.

Rev. Douglas Reams, Executive Director of Reston Interfaith Housing Corporation, 11062 Saffold Way, Reston, represented the applicant. He stated that they wanted to modify a current permit so they could take over and run a child care center in a building that had previously been used as a child care center since 1974. The previous owners moved to another building, and this building became available. Rev. Reams stated that Reston Interfaith Housing Corporation had run a child care center in Reston for five years and they needed additional space. He stated that it would be a very similar operation to what has been run in the past. There will be no changes except in the hours of operation. He stated that the Reston Interfaith Housing Corporation is a group of sixteen congregations in the Reston/Herndon area.

Rev. Reams stated that the center is now operating under the name Laurel Learning Center. Chairman Smith indicated that the application should have included the name of the center along with the corporation name. RE: Reston Interfaith Housing Corporation T/A Laurel Learning Center. Chairman Smith stated that they should go ahead and issue a total permit for this child care center instead of just a change in hours.

Rev. Reams stated that there would be 60 children and approximately twenty teachers. There would not be twenty teachers there at one time. The ages of the children are age 2 - 10. He stated there is adequate parking, approximately 40 spaces available.

There was no one to speak in support and no one to speak in opposition to the request.

412

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-C-007 by RESTON INTERFAITH HOUSING CORPORATION T/A LAUREL LEARNING CENTER under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-197-74 for child care center to permit change of permittee and hours of operation from 7:00 A.M. - 6:30 P.M. to 7:00 A.M. - 7:00 P.M., located at 12100 Sunset Hills Road, tax map reference 17-3((1))pt. of 1, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 16, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is Reston Land Corporation.
2. The present zoning is R-1.
3. The area of the lot is 2.1677 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of students shall be 60.
8. The hours of operation shall be 7:00 A.M. to 7:00 P.M., Monday thru Friday.
9. There are 40 parking spaces adjacent to this property.
10. There shall be 20 teachers.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 0. (Mr. DiGiulian & Mr. Yaremchuk being absent)

Page 412, March 16, 1982, Scheduled case of

11:45 A.M. LAWRENCE E. LEWY, appl. under Sect. 3-203 of the Ord. for a home professional office (attorney), located 4841 Randolph Dr., R-2, Mason Dist., 71-4((16))13, 20,092 sq. ft., S-82-M-008.

(FOR TESTIMONY REGARDING THIS CASE, PLEASE REFER TO THE VERBATIM TRANSCRIPT ON FILE IN THE CLERK'S OFFICE.)

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-M-008 by LAWRENCE E. LEWY, under Section 3-203 of the Fairfax County Zoning Ordinance for a home professional office (attorney), located at 4841 Randolph Drive, tax map reference 71-4((16))13, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 16, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 20,092 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED * with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be 9:00 A.M. to 5:30 P.M., five days a week.
8. The number of parking spaces shall be two.
9. The applicant is limited to five clients per week.
10. The applicant shall not display a sign on the subject premises.
11. This permit shall be granted for a period of one year.

Mrs. Day seconded the motion.

The motion *FAILED by a vote of 2 - 1 (Mr. Smith) (Mr. DiGiulian and Mr. Yaremchuk being absent)

Page 413, March 16, 1982, Scheduled cases of

12:00 NOON — NEIL R. MCDONALD, appl. under Sect. 3-303 of the Ord. for a home professional office (attorney), located 1506 Chain Bridge Rd., R-3, Dranesville Dist., 30-2((7))(2)5 & 6, 8,078 sq. ft., S-82-D-011.

12:15 P.M. — NEIL R. MCDONALD, appl. under Sect. 18-401 of the Ord to allow a home professional office on a lot containing 8,078 sq. ft., and having width of 50.94 ft., and in a house with deck located 4.7 ft. from side lot line (10,500 sq. ft. min. lot area and 80 ft. min. lot width req. by Sect. 3-306; 6 ft. min. side yard for deck req. by Sects. 3-307 and 2-412), located 1506 Chain Bridge Rd., R-3, Dranesville Dist., 30-2((7))(2)5 & 6, 8,078 sq. ft., V-82-D-013.

414

Chairman Smith informed the applicant, Mr. Neil McDonald that there were only three Board members present and he would need a unanimous vote to take action on either of the applications. Chairman Smith asked the applicant if he wanted to proceed with the hearing or have it deferred until there were more Board members present.

Mr. McDonald asked that the applications be deferred to another date.

The Special Permit and Variance applications were deferred to March 30, 1982 at 11:45 P.M.

Page 414, March 16, 1982, Scheduled case of

12:30 P.M. MONTESSORI CHILDREN'S CREATIVE CENTER, INC., appl. under Sect. 3-E03 of the Ord. to permit nursery school, located 9222 Georgetown Pike, R-E, Dranesville Dist., 13-2((1))8, 7.0 acres, S-81-D-085. (DEFERRED FROM 1/26/82 FOR AMENDMENT TO VARIANCE AND FROM 3/9/82 FOR LACK OF REPRESENTATION).

There was no one present to represent the application. On a motion by Mr. Hyland and seconded by Mrs. Day the application was denied due to lack of interest and representation. The vote was unanimous.

Page 414, March 16, 1982, After Agenda Items

HAWTHORNE ESTATES HOMES ASSOCIATION & JACOBSEN BROS., INC. S-51-79 - The Board was in receipt of a letter from Clarence R. Saccardi asking for an extension for S-51-79 to allow more time to build a second tennis court. Mr. Hyland made a motion to extend the permit until October 17, 1982. Mrs. Day seconded the motion. The motion passed by a unanimous vote.

//

Page 414, March 16, 1982, After Agenda Items

The Board approved the minutes for May 6, 1980 and May 13, 1980, as presented.

// There being no further business, the Board adjourned at 5:00 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

DANIEL SMITH, CHAIRMAN

Submitted to the Board on Dec 13, 1983

APPROVED:: Dec. 20, 1983
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 23, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman called the meeting to order at 8:25 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. OLD KEENE MILL SWIM & RACQUET CLUB, INC., appl. under Sect. 3-103 of the Ord. to amend S-315-76 & S-80-S-094 for community recreation facility to change hours of operation for swimming pool & tennis courts to 7:30 A.M. - 10:00 P.M., located 9534 Orion Ct., R-1, Springfield Dist., 78-3((1))7C, 3.27 acres, S-82-S-010.

Mr. William A. Nunn of Burke represented the swim club. He informed the BZA that he had made the application at the direction of the members of the Board of Directors and as requested by the general membership. Old Keene Mill Swim & Racquet Club was a private swim and tennis club. They had approximately 600 family memberships. Mr. Dunn stated that the club competed in swim meets in the morning hours and the general membership used the pool from 11:00 A.M. to 9:00 P.M. There were other interests which the pool had not been able to accommodate like the swim and dive team. The club offerred swimming lessions to the children and they wanted to offer swimming lessions to the adults also! Another interest within the membership was life-saving instruction. The special interests were not the type to be offerred when the general membership was using the facilities. Therefore, the club proposed to increase its hours to accommodate these interests. Mr. Nunn explained that they were a self-governing pool. They had a Board of Directors to do the financial accounting. He stated that they were amateurs and not professional people but had been elected to serve. The club had been in existence since 1977. He stated that the people who had planned the pool and its operation had done an outstanding job but they were amateurs also. In 1980, the club had to request an amendment to the tennis court closing hours.

Mr. Nunn stated that notices of this amendment had been sent to twenty-two abutting property owners and there were only two negative responses. One was from Mr. Pearson and one from Mr. Hollowell about there not being any desire or demand for the change in hours. Mr. Nunn stated that one Board member had ten to twenty serious requests from the general membership to increase the hours. Many adult members were interested in taking swimming lessons and did not wish to display their ignorance with a lot of children around. Mr. Nunn stated that the pool had to be used in its entirity in order to conduct the classes with reasonable safety.

With respect to the opposition, Mr. Nunn stated that he had read Mr. Pearson's letter and much of what he had stated did actually happen. In each case, the club did take corrective action. Mr. Pearson was distressed at the noise of the diving board. Mr. Nunn stated that had been brought to the club's attention last summer. The club had installed dampering devices on their boards. Mr. Pearson was concerned about trespassers going through his yard Mr. Nunn stated that he had no way of knowing whether they were members of the club. However, the club had instructed the children not to go through the yards of adjoining properties. Mr. Nunn stated that the club could not control the neighbors' yards. He indicated that there were things the neighbors could do. With respect to trespassers in the pool, Mr. Nunn stated that was a serious problem for the club. The club had thought about putting up lights to discourage the kids but they did not want to annoy the neighbors. The club had thought about hooking up the burglar alarm to the fence but were afraid that the children would deliberately set it off. With regard to the matter of the diving team practice at 6:30 A.M., Mr. Pearson had notified the club in July of 1981. The club had read the letter and gave the matter some thought about 6:30 A.M. being an unreasonable hour. The club felt that 7:30 A.M. was better. The 7:30 A.M. time was typical of the times for other pools in the league to begin their practice. Mr. Nunn stated that he did not know of any pool that did not have a 7:30 A.M. to 9:30 A.M. practice for its swim team.

Chairman Smith inquired as to the pools that permitted the swim practice that early. Mr. Nunn responded that Parliament Pool Association operated from 7:30 A.M. to 9:30 A.M. back in 1971 when they were members of the Springfield league. Mr. Nunn stated that the club had done what it thought would satisfy the people. The club had not known that it was in violation until they got the notice last summer. All activities in violation had ceased immediately. It had caused some complaints from the general membership but at least the club had complied with the law.

Mr. Nunn explained to the Board that it was necessary to have the swim team practice in the early morning. The life-saving instruction was best carried on outside of the general membership hours. From 9 P.M. to 10 P.M. was the best hours for that course. Mr. Nunn stated that the amendment was a reasonable request to the BZA and he asked them to act favorably.

Mrs. Day stated that she belonged to a community pool and they had a champion swim team. From 9 A.M. to noon, she was not able to use the pool because of the swim team. The adults used the pool in the evening. At 8 o'clock in the evening, there was not many people there. She stated that she would not want to hear whistles at 7:30 in the morning and felt that 9 A.M. was early enough. Mrs. Day stated that the adults could come in the evening. She

416

stated that the club had to consider the neighbors. Mr. Nunn stated that the life-saving program was from 9 A.M. to 11 A.M. for the children. Last summer, the club had put up sign-up sheets for the kids to take the course. The club had expected only about 25 children but instead they had 125 children sign up. The club was not able to accommodate everyone. Mr. Nunn stated that the 125 were just the children interested in the course and did not include the adults.

Mr. Nunn stated that the club wanted to continue its life-saving courses. It did not get dark in the summer until 9 P.M. He indicated that nothing was impossible and that the club would do what it had to do. Mrs. Day questioned the height of the fence and whether it surrounded the perimeter of the club property or just the pool. Mr. Nunn responded that there was a 6 ft. chain link fence. He stated that the club had thought about a higher fence but it would not keep out trespassers.

There was no one else to speak in support. Mr. George Pearson of 6125 Covered Bridge Road spoke in opposition. Mr. Pearson informed the Board the citizens had settled for a 7:30 starting time for the tennis courts because it was better than 6:30 A.M. With respect to the pool, the citizens were not aware that no one was allowed there until 9 A.M. As far as the extra hour requested for the pool, he stated that the adults could come in after 6 o'clock since no one under 13 was allowed. Mr. Yaremchuk inquired as to who was in the community first and was informed the pool was under construction when the neighbors moved in.

Mr. John Hollowell of 6121 Covered Bridge Road objected to the application of the swim club. He stated that ten hours a day, seven days a week was sufficient hours for the club. Any increase in hours would be insensitive to members living around the pool. Mr. Hollowell informed the Board that he resided two doors down from Mr. Pearson who was adjacent to the pool.

The next speaker in opposition was Paul T. Sewell of 6129 Covered Bridge Road. He lived two doors down from Mr. Pearson. Mr. Sewell stated that he had been a pool manager, swim instructor and a life-saving instructor. Mr. Nunn was a good champion of the dive team. However, the six families residing near the pool did not want the burden on them caused by the increase in hours. Mr. Nunn did not live next to the pool so he would not be burdened by the noise. Mr. Nunn had raised several reasons for requesting the additional time. One was that the swim and dive team needed practice. Mr. Sewell stated that in the past when the team came into practice, they were there into the time the members were using the pool. Mr. Sewell stated that it was a very large pool and could accommodate many activities at the same time. With respect to the adult swimming lessons, he understood that the participants preferred to have it take place when the pool was less utilized. However, from 8 to 9 P.M. there was hardly anyone ever there. Mr. Sewell stated that it would not be unreasonable to hold the adult swim lessons at that time. Mr. Sewell informed the Board that just because the pool opened at 9 and closed at 9, the lifeguards utilized the stereo system well after the closing time. Mr. Sewell stated that the neighbors hoped that the Board would deny the request for the extension of hours as there was no reason to extend them.

Mr. Hyland inquired as to how common it was for the pool staff to continue using the pool past the closing time. Mr. Sewell stated that it depended on how often the neighbors complained to the club President. He would jump on the staff and it would not occur for awhile. Mr. Hyland inquired as the frequency the neighbors had to complain about the pool lights, etc. Mr. Sewell responded that over the past four years, he had called Chuck Martin ten times who had to go down and ask the people to leave. Mrs. Day inquired as to what was entailed in the closing in the pool. Mr. Sewell stated that he did not know the specifics of the job but assumed it was only straightening up chairs, cleaning the deck and restrooms. He stated that they started the operation when no one was in the pool. Mr. DiGiulian inquired if Mr. Sewell was a member of the club and was informed he was. Chairman Smith inquired if it was common practice to have a stereo there at the pool. Mr. Sewell stated that the staff was not supposed to use it. He stated that the club was responsive to compliants but it was a matter of the neighbors' diligence. Mr. Sewell stated that the club seemed to have an attitude of over enthusiasm and the request to extend the hours would only create additional disservices.

During rebuttal, Mr. Nunn stated that he had been a member of the club for three years. He was aware of only one instance of a party by the lifeguards and that had been during the previous summer. It had been brought to the club's attention and they had a talk with the pool manager who wanted to fire them all. Mr. Nunn stated that he was somewhat distressed about all the parties. He inquired if Mr. Sewell was confused with the six exceptions the pool was granted for after hours parties. Mr. Nunn stated that he was unaware of the problem with the stereo. He stated that it should not take long to clean up the area and indicated it should only take 15 minutes. Mr. Nunn stated that the stereo did not play while cleanup was going on.

Mr. Hyland inquired about the meeting held when the vote was taken to increase the hours. He inquired as to the number of persons attending the meeting and was informed there were 100 to 150 persons present. Mr. Hyland asked if the subject of the extension of hours had been on the agenda and was informed it had not been but was discussed at the meeting.

Mr. Nunn stated that the pool had been there for a long time. Mr. Sewell moved in four years ago. Mrs. Day inquired if it was possible to instruct the pool employees not to use the lights during cleanup. Mr. Nunn replied that it was possible. He stated that they could turn off the large post lights.

Mr. Nunn informed the Board that there were speakers in support of the application who had not heard the Chairman call for testimony in support as they were sitting at the back of the room. Chairman Smith indicated that it was not possible to hear any additional testimony. Mr. Hyland inquired if the tennis courts had been a problem. Mr. Sewell stated that he lived the closes to the tennis courts and there was not any problem with them. Mr. Sewell stated that he could not hear anything but the ball and he was not opposed to the extension for the tennis courts. Mr. Yaremchuk inquired if Mr. Sewell played tennis at night and was informed he did not play at all. Mr. Pearson informed the Board that the courts were on the other end of the pool and not a problem at all.

R E S O L U T I O N

Mr. DiGiulian made the following motion:

WHEREAS, Application No. S-82-S-010 by OLD KEENE MILL SWIM & RACQUET CLUB, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-315-76 & S-80-S-094 for community recreation facility to change hours of operation for swimming pool & tennis courts to 7:30 A.M. to 10:00 P.M., located at 9534 Orion Court, tax map reference 78-3((1))7C, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on March 23, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 3.27 acres.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and,

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 417, March 23, 1982, Scheduled case of

8:15 P.M. PANACHE BUILDERS, INC., appl. under Sect. 3-503 of the Ord. for community swimming pool, bath house, and related facilities, R-5, Mason Dist., 59-4((1))pt. 9A, 31,875 sq. ft., S-82-M-012.

Mr. Russell Rosenberger of 9401 Lee Highway in Fairfax represented the applicant. Mr. Rosenberg stated that Panache Builders had built Lafeyette Village which consisted of 75 acres with 294 townhouses and 291 single family homes. The proposed pool would serve all of the townhouses and single family homes. It was located within easy walking distance of the community. Mr. Rosenberg stated that because it was within easy walking distance, they were requesting somewhat less than the required parking spaces for the site. Bicycle racks would be provided to accommodate the children of the community. Mr. Rosenberg stated that the hours of pool operation would be 11 A.M. to 9 P.M. from Monday through Saturday and from Noon to 4 P.M. on Sunday. The pool would serve 315 families.

Mr. Rosenberg stated that the BZA members were in receipt of a memorandum indicating some discrepancy about the location of the pool. Mr. Rosenberg stated that they were not aware that the Zoning Administrator wanted the BZA to defer the application in order to take it back to the Planning Commission. Mr. Rosenberg stated that it had been a requirement that the plat go back to the Planning Commission and it was only an oversight. He stated that he would welcome deferral in order that this be accomplished. Mr. Yaremchuk stated that according to the memorandum, the Zoning Administrator had suggested that the BZA hear the application and allow the Planning Commission to review the site plan.

Mrs. Katherine Needham of 4008 Hirst Drive in Accotink Heights spoke in support of the application. She stated that she lived on the road going up to the pool. Mrs. Needham stated that this was a new pool but there was a lot of development going in and she was concerned about the limit the Board would put on the permit. She stated that she did not want an indefinite permit granted for the pool. Mrs. Needham stated that the pool was going to put a road in. If a problem developed, she wanted to be able to clear it up. Chairman Smith informed Mrs. Needham that the normal thing was to set a limit on the number of memberships and hours of the pool. He stated that it was difficult to get financing if there was a limit or only a temporary use permit. Mrs. Needham stated that she felt five years was an adequate time frame. She informed the Board that at the present, the pool would not bother her. The subdivision was quite a distance between her and the pool but she wanted to leave the door open in case there were problems. Mrs. Needham stated that she was only being cautious. Chairman Smith advised Mrs. Needham that the special permit ran with the land. Mrs. Needham stated that she would not like to have to take any problems to court. Mr. Yaremchuk stated that the BZA did not place time limits on pools. It would be owned by a non-profit organization.

There was no one to speak in opposition. During rebuttal, Mr. Rosenberg stated that the pool had been located in such a way to have minimal impact on anyone but Lafayette Village itself. Mr. Yaremchuk inquired as to what problems there would be if the permit was limited to five years. Mr. Rosenberg advised that he did not believe the pool would be able to obtain financing. If it did, what would become of the pool at the end of five years. Mr. Yaremchuk asked Mrs. Needham if she objected to the pool and she responded that she was just being cautious. Mrs. Needham stated that she owned a half-acre and did not object to the pool.

Chairman Smith closed the public hearing. Mr. Yaremchuk moved that the Board defer decision as per the request of the Zoning Administrator. It was seconded by Mr. DiGiulian and passed unanimously. The decision was scheduled for April 13, 1982 at 11:30 A.M.

//

Page 418, March 23, 1982, Scheduled case of

8:30 P.M. ADDICOTT HILLS LIMITED PARTNERSHIP, appl. under Sect. 18-406 of the Ord. to allow deck to remain 13.5 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412), located 9800 Thunderhill Ct., R-1, Dranesville Dist., 13-1((8))8, 23,580 sq. ft., V-82-D-011. (DEFERRED FROM 3/9/82 FOR PRESENTATION BY BUILDER AS TO HOW DECK WAS SO BUILT WITHOUT PERMIT).

Mr. Shahnaz Faily of 9811 Thunderhill Court informed the BZA that he was President of the Addicott Hills Limited Partnership. He stated that he had not been present at the last BZA meeting because of business but was present this evening to answer any questions. Chairman Smith advised Mr. Faily that the BZA was only authorized to grant variances under Section 18-406 after a building permit had been obtained. In this case, there was no indication that a building permit had been obtained. Mr. Faily informed the Board that he started building two years ago and had built thirteen houses so far. The first seven houses were never required to get a building permit for the deck. Mr. Faily stated that he had placed the deck on with the final approval. This past September and October were the first times he had been required to have the building permits. At that time, this particular deck was under construction. He submitted his drawings to the County and was told that it was too close to the line.

Mr. Yaremchuk commented that the builder had built the house all the way to the back lot line. Mr. Faily stated that the story on the history of the matter was a long one. Originally, the subdivision was to have 16 lots. Mr. Faily stated that he was new at the business and had been told that since the property was less than 17 acres, he would not be allowed to build 17 lots on them. The seller had asked for the 17th lot. He was able to get it even though the property was short of the 17 acres. That one lot was squeezed between this lot and the lot next to it. When the house was constructed on lot 8, they had forgotten that the lot line had changed. They constructed the deck because they thought it was safe. Mr. Yaremchuk inquired if a building permit had been obtained for the house and was informed it had been. Mr. Yaremchuk inquired as to when the engineer had observed the deck. Mr. Faily stated that the final survey showed the deck. Mr. Yaremchuk stated that it had not been intentional to place the deck in violation. The lot was squeezed and the builder had lost sight of the back line. Mr. Faily stated that the squeezing had changed the rear lot line. The change had not taken place after the house was built. Mr. Yaremchuk stated that he could understand how it happened. They did not have the property staked out. When the final lot line was created, the builder put the house closer to the rear lot line.

Chairman Smith inquired as to how the builder had located the houses. Mr. Faily stated that he had one drawing with all sixteen houses on it. He took that drawing to the County and staked out according to the houses location on the drawing. Mr. Faily stated that he put the streets in. The previous seller got the 17th lot and had to change some of the back lines. Mr. Faily stated that when he discovered the mistake, he had tried to resubdivide as they owned six more lots. However, he was told that the BZA looked at genuine mistakes with sympathy.

Page 419, March 23, 1982 Board of Zoning Appeals
ADDICOTT HILLS LIMITED PARTNERSHIP
(continued) RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Appli-ation No. V-82-L-011 by ADDICOTT HILLS LIMITED PARTNERSHIP under Section 18-406 of the Fairfax County Zoning Ordinance to allow deck to remain 13.5 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-107 & 2-412) on property located at 9800 Thunderhill Court, tax map reference 13-1((8))8, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board of Zoning Appeals on March 9, 1982 and deferred until March 23, 1982 for additional testimony; and

WHEREAS, the Board has made the following findings of fact:

THAT non-compliance was no fault of the applicant. The Board has received testimony indicating that the builder was not aware that he needed to get a building permit prior to the construction of the deck. In fact, seven decks were previously constructed by the builder without such a building permit. After the house was located on this lot, changes occurred which changed the rear lot line which then brought the deck into non-compliance with the setback.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the granting of this variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 419, March 23, 1982, Scheduled case of

8:45 P.M. GARY S. IBACH, appl. under Sect. 18-401 of the Ord. to allow construction of a greenhouse addition to dwelling to 9 ft. 7 in. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 4010 Elizabeth Ln., 58-4((8))100, R-1, Annandale Dist., 21,750.01 sq. ft., V-81-A-225. (DEFERRED FROM 1/12/82 & 2/11/82 FOR DECISION OF FULL BOARD & RECEIPT OF PLATS TO INDICATE NEW SETBACK).

Chairman Smith stated that Mr. Ingram had been the only person objecting to Mr. Ibach's variance. Mr. Ingram owned lot 99 next door. Mrs. Day inquired if Mr. Ingram would object to a variance of 7.6 ft. Mr. Ingram responded that he would not object if the variance were modified. Mrs. Day inquired as to what portion of Mr. Ingram's property faced the greenhouse. Mr. Ingram stated that the side of his house would face the greenhouse. There was one window in the master bedroom that would face the greenhouse. Mr. Ingram stated that there were not any lower windows. Mrs. Day stated that the greenhouse would be all glass, and she asked what would be objectionable about it. Mr. Ingram responded that he objected to the size of it for aesthetic purposes. Mr. Ingram stated that to get any southern exposure, it would require the greenhouse to be built on the south. There was a drainage easement in the back of Mr. Ibach's lot. However, Mr. Ingram stated that he did have room to build a portion of the structure at the back of the house.

Mr. Hyland stated that the BZA had asked whether Mr. Ibach could build at the back of the house and the answer was no. Mr. Ingram stated that the answer was no due to the size. When placed at the rear, the structure of 10'x18' did go over into the drainage easement. Mr. Ingram stated that the greenhouse was more of a solar device and would be used for living space and a play area for his children. Chairman Smith stated that he did not remember Mr. Ibach coming up with any solar statements. Chairman Smith stated that Mr. Ibach had not justified the variance under the hardship section of the Ordinance. He stated that Mr. Ibach could place the solar device on the roof and not need a variance.

Page 419, March 23, 1982 Board of Zoning Appeals
GARY S. IBACH

RESOLUTION

In Application No. V-81-A-225 by GARY S. IBACH under Section 18-401 of the Zoning Ordinance to allow construction of a greenhouse addition to dwelling to *9.7 ft. from side lot line (amended by applicant to allow construction of a greenhouse addition to dwelling to 12.5 ft. from side lot line)(20 ft. min. side yard req. by Sect. 3-107), on property located at 4010

RESOLUTION

Elizabeth Lane, tax map reference 58-4((8))100, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; March 11, 1982 and deferred for decision and revised plats until March 23, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject proper ty is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 21,750.01 sq. ft.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 2 (Messrs. DiGiulian & Yaremchuk).

Page 420, March 23, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of BZA Minutes for May 20, 1980 and June 3, 1980. Mr. DiGiulian moved that the Minutes be approved and Mr. Hyland seconded the motion. The motion passed unanimously by a vote of 5 to 0.

//

Page 420, March 23, 1982, After Agenda Items

Claude Wheeler & Betty Wheeler, T/A Burke Centre Academy: The Board was in receipt of revised plats for the Burke Centre Academy. It was the consensus of the Board to approve the revision.

//

Page 420, March 23, 1982, After Agenda Items

Lawrence Lewy: The Board was in receipt of a request from Mr. Lawrence Lewy concerning reconsideration of the denial for a special permit for a home professional office. In his letter, Mr. Lewy questioned the outcome of the decision which resulted in a 2 to 1 vote. Mr. Hyland stated that Chairman Smith had made it very clear that there were only three Board members the day of the decision. Mr. Hyland stated that he was certain of that. However, he did not recall communicating to Mr. Lewy the fact that he needed a unanimous vote of the three Board members. Mr. Hyland stated that he was not certain whether Mr. Lewy understood that he needed all three votes. Mr. DiGiulian stated that he gathered Mr. Lewy thought he had the permit when the vote came out 2 to 1. Chairman Smith stated that Mr. Lewy was not an informed attorney. Chairman Smith stated that Mr. Lewy sat through the other requests and had heard him make the same statement to the other applicants. Chairman Smith stated that the Board should listen to the record in the matter.

Mr. DiGiulian stated that based on the apparrent controversy as to whether or not the procedure was explained to Mr. Lewy and because he was not given an opportunity to respond, Mr. DiGiulian moved that the BZA reconsider his case. Mr. Yaremchuk seconded the motion. Chairman Smith stated that he would accept the motion and the second but he questioned the procedure as Mr. DiGiulian and Mr. Yaremchuk were basing their decision on the statement of the applicant and had not heard the other people involved. Mr. Hyland stated that there was no prevailing side. Chairman Smith stated that he did not like the cases to end up like that. He stated that it was unfortunate but it was the procedure. Chairman Smith suggested the Board table the request for further discussion at the next meeting in conference with the County Attorney. Mr. Hyland stated that he believed the BZA had the right to table or reconsider. Chairman Smith asked the Board to recess the matter until the next meeting.

Mr. Hyland moved that the Board recess the matter until the next meeting. Mrs. Day seconded the motion and it passed by a vote of 4 to 1 (Mr. Smith).

There being no further business, the Board adjourned at 10:30 P.M.

421

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on Dec. 13, 1983

Daniel Smith, Chairman

Approved: Dec. 20, 1983
Date

422

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 30, 1982. The following Board Members were present: Daniel Smith, Chairman; John Yaremchuk, Ann Day and Gerald Hyland. John DiGiulian was absent.

The Chairman called the meeting to order and Mrs. Day led the prayer.

// Mr. Hyland moved that the Board go into Executive Session to discuss a reconsideration of the Lawrence E. Lewy special permit that was denied by the Board on March 16, 1982. The Chairman indicated that the Board would only take approximately take 10 minutes for this discussion.

// The Board re-convened at 10:25 A.M. Mr. Hyland stated that the County Attorneys Office had advised the Board that they do not have the authority to reconsider the matter. He stated that that leaves Mr. Lewy to his rights to appeal the decision of the Board.

The Chairman called the 10:00 A.M. case

10:00 A.M. FRANK A. LEONE, appl. under Sect. 18-401 of the Ord. to allow resubdivision of 4 lots into 2 lots, with proposed lot 4B having width of 75 ft. (80 ft. min. lot width req. by Sect. 3-306), located 6870 Churchill Rd., R-3, Dranesville Dist., 30-2((2))(B)4 & 30-2((22))(G)6, 7, & 8, 36,507 sq. ft., V-82-D-014.

The Chairman stated that the application was not in order and the variance application had to be amended. The application was deferred to May 4, 1982 at 10:10 A.M.

Page 422, March 30, 1982

10:10 A.M. ROBERT C. & HELEN L. WASSON, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 13.18 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), located 7937 Bolling Dr., R-2, Mt. Vernon Dist., 102-2((10))45, 18,466 sq. ft., V-82-V-015.

Robert Wasson, of 7937 Bolling Drive, Alexandria, presented his application. He stated that the present house has only one bathroom and no basement and is too small to provide any substantial storage space. The addition would solve these problems and create a protective entry way to the kitchen, including space for a washer and dryer. The addition can be made in a desirable manner only if it's located adjacent to the side entryway. The bedroom would be accessible without passing through other bedrooms and likewise would be conveniently located next to the new bathroom. The house is small relative to the lot size, and the lot is pie shaped. The position of the house on the lot makes even a small addition impractical without the granting of a variance. He stated that the variance was small, approximately two feet. In reply to a question from Chairman Smith, Mr. Wasson stated that he and his wife had moved into the house in March, 1949.

There was no one to speak in support and no one to speak in opposition.

Page 422, March 30, 1982 Board of Zoning Appeals
ROBERT C. & HELEN L. WASSON

RESOLUTION

In Application No. V-82-V-015 by ROBERT C. & HELEN L. WASSON under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 13.18 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207), on property located at 7937 Bolling Drive, tax map reference 102-2((10))45, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 18,466 sq. ft.
4. That the applicant's property has converging property lines, the house is placed on the lot at an angle, the requested variance is minimal, there is not opposition form any neighbors.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

423

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. DiGiulian being absent)

Page 423, March 30, 1982, Scheduled case of

10:20 A.M. PENELOPE J. JOHNSON, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage to 10 ft. from side lot line (20 ft. min. side yard req. by Sects. 3-107 & 10-105), located 4117 Elizabeth Ln., R-1, Annandale Dist., 58-4((8))K, .611 acres, V-82-A-017.

Penny Johnson, of 4117 Elizabeth Lane, Fairfax, presented her application. She stated that she had lived at this address since 1965. She stated that the homes in the area were zoned R-1, but most of them varied with between 1/2 and 3/4 acre lots. These homes were built before the 1978 zoning requirements, therefore most of the garages in the area are within 5 ft. of the side lot lines. She presented photographs showing similar homes in the area with garages. She stated that on the driveway side of her house there was a well and an outside entrance to the basement. This prevents the garage from being placed on that side. To the back of the house there is a deck, septic tank and septic field. This means the garage must be located more than 60 feet behind the house to accommodate all of these things. The variance within 10 feet of the side lot line will permit a relatively straight driveway going to the back and not encroach on the septic drainage fields. The lot is heavily wooded and there are several large oak trees shading the house in this area. If the driveway has to be curved significantly, three of the large trees would have to be taken out. Under the circumstances, we would like to save as many trees as possible. In reply to a question from Mrs. Day, Ms. Johnson stated that the neighbor facing the garage has a completely wooded lot. She stated that they were not here to speak and did not have any objections.

There was no one to speak in support and no one to speak in opposition.

Page 423, March 30, 1982 Board of Zoning Appeals
PENELOPE J. JOHNSON

RESOLUTION

In Application No. V-82-A-017 by PENELOPE J. JOHNSON under Section 18-401 of the Zoning Ordinance to allow construction of detached garage to 10 ft. from side lot line (20 ft. min. side yard req. by Sects. 3-107 & 10-105), on property located at 4117 Elizabeth Lane, tax map reference 58-4((8))K, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is .611 acres.
4. That the applicant's property being .611 acres, is exceptionally irregular in shape, including narrow. The topographical problem is the existence of a septic field at the rear of the house which prevents the garage being built in that area. The garage will be in a wooded area at the rear of the property having 39 ft. before the rear lot line.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

RESOLUTION

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

Page 424, March 30, 1982, Scheduled cases of

10:30 A.M. MT. CALVARY BAPTIST CHURCH, appl. under Sect. 3-403 of the Ord. to permit addition to church building for an existing church and related facilities, located Quander Rd., & Emmett Dr., R-4, Mt. Vernon Dist., 93-1((1))40, 0.50 acres, S-82-V-013.

10:45 A.M. MT. CALVARY BAPTIST CHURCH, appl. under Sect. 18-401 of the Ord. to allow a building addition to an existing church & related facilities on a corner lot having width of 67 ft., and with an existing gravel parking lot (95 ft. min. lot width req. by Sect. 3-406; dustless surface for parking lot req. by Sect. 11-102), located Quander Rd. & Emmett Dr., R-4, Mt. Vernon Dist., 93-1((1))40, 0.50 acres, V-82-V-016.

The first speaker was Robert Burns, an architect, located at 1100 Princess Street, Alexandria, representing the trustees and the congregation of Mt. Calvary Baptist Church. He stated that the congregation is planning an addition to the church. The church has been in existence since 1955 and the proposed addition would be on the front of the church. He stated that they were not enlarging the memberships or the parking lot.

Mrs. Day stated that she had researched this with several offices, and in the Comprehensive Plan there were supposed to be trailways along Quander Road. She stated that staff had requested the condition that 15 feet of dedication plus 5 feet be dedicated and nothing be developed on the front of the property. She stated that at the time of trail dedication, it would be decided whether the trails should be asphalt or concrete. Chairman Smith stated that according to the plat, the church had a future dedication of 30 feet. Mr. Yaremchuk stated that this should be handled under Site Plan Control.

The next speaker in support was Albert A. Wilson, the pastor of the Mt. Calvary Church. He stated that they needed the addition for sanitary purposes. The way the church is constructed, the bathroom is practically in the main sanctuary. The new addition also would help to conserve energy and create a better worship environment.

The next speaker, Mr. Nathaniel Copeland of 6418 Quander Road, next door to the church, spoke in opposition. He stated that the church was placed closer to the front lot line than his house was. He stated that the church was 71 ft. from the front lot line and his house was 107 feet. It was already approximately 30 feet ahead of his house. He submitted a plat of his property for the record.

The next speaker in opposition was Mr. Willis Faults, of 2220 Emmett Drive, Alexandria. He stated that he felt if a gravel parking lot was going to be granted, it should be stipulated that it should be maintained properly, to make sure there were no potholes and waterholes. Mr. Yaremchuk stated that this comes under Site Plan Control. Plans must be submitted to the County and they will look at the drainage and maintenance. It must be maintained at all times in a reasonable manner, or the citizens can call an inspector to take a look at it.

Mr. Faults stated that he felt a gravel parking lot was a better situation than a paved lot because of the drainage problems. The gravel would help prevent water run-off and would be more beneficial.

During rebuttal, Mr. Burns stated that as far as the gravel parking lot was concerned, there was no County storm sewer system, and for run-off purposes, the church was better off with a gravel parking lot. He stated that he was aware the gravel parking lot would have to be maintained.

There was no one else to speak in support and no one else to speak in opposition.

425

RESOLUTION

WHEREAS, Application No. S-82-V-013 by MOUNT CALVARY BAPTIST CHURCH under Section 3-403 of the Fairfax County Zoning Ordinance to permit addition to church building for an existing church and related facilities, located at Quander Road & Emmett Drive, tax map reference 93-1((1))40, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is .50 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The seating capacity shall be 128.
8. The hours of operation shall be normal hours of church functions.
9. The number of parking spaces shall be 32 as shown on the site plan.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. DiGiulian being absent)

Page 425, March 30, 1982 Board of Zoning Appeals
MOUNT CALVARY BAPTIST CHURCH

RESOLUTION

In Application No. V-82-V-016 by MOUNT CALVARY BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow a building addition to an existing church and related facilities on a corner lot having width of 67 ft., and with an existing gravel parking lot (95 ft. min. lot width req. by Sect. 3-406); dustless surface for parking lot req. by Sect. 11-102), on property located at Quander Road & Emmett Drive, tax map reference 93-1((1))40, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1982; and

RESOLUTION

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is .50 acres.
4. That the applicant's property has a gravel parking area which has been in existence since 1955. The Board has received testimony indicating that to continue the existence of the gravel parking area would permit the retention of storm water on the site and would preclude it from being disbursed to neighboring properties. There is no public storm sewer system. The Board has received testimony from one abutting property owner who feels the continuation of the gravel parking area would be in the best interests of the property owners involved.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. DiGiulian being absent)

Page 426, March 30, 1982, Scheduled case of

11:00 A.M. TDK, INC., appl. under Sect. 3-103 of the Ord. for a child care center for 90 children, located 9500 Old Keene Mill Rd., R-1, Springfield Dist., 88-1((3))1, 40,245 sq. ft., S-82-S-009.

The first speaker, Rachel Taylor, 4944 Andrea Avenue, Annandale, Virginia, presented her application. She stated that she was the President of TDK, Inc. which is a corporation formed of three couples for the purpose of opening a child care center in Fairfax County.

Chairman Smith stated that the Board was in receipt of a letter dated March 25, 1982 from the Planning Commission. The Planning Commission by unanimous consent agreed to pull S-82-S-009 for review. Mr. Hyland made a motion that notwithstanding the request, he would move that the Board hear the case today. Mr. Yaremchuk seconded the motion. The Board voted unanimously to hear the case.

Ms. Taylor stated that the Board had the application in hand, and she hoped they would use their good judgement to determine whether the special use permit should be granted or not.

The next speaker, George Lynch of 6336 Silas Burke Street spoke in opposition. He presented some photos of Silas Burke Street and a plat of the Burke Heights Subdivision. He stated that he had recently mailed letters to the Board of Zoning Appeals and the Planning Commission. He stated that he was the spokesman for the subdivision, and they wanted the application denied for several reasons. The first is the traffic the school would generate on Keene Mill Road and the traffic on Silas Burke Street. The overall width of the street averages between 18 and 19 feet. He stated that the subdivision has covenants and restrictions that had been in effect since the late 1950's when the property in question went on sale. He stated that when the property owners bought their land they agreed to abide by the covenants, and they saw no reason to forfeit that right and let a day care center come in.

Mr. Hyland inquired as to what the covenant provided. Mr. Lynch stated that there were two points in the covenant that were relevant to this case. One of them, #4, says the lots in said subdivision shall be used for residential purposes only, and none of the said lots shall be further subdivided. In point #11; these covenants and restrictions shall be enforceable both by action at law and by bill in chancery, or in junction by other relief, by any person or persons injured or aggrieved by the breach of violation thereof, or any of them, and neither remedy shall be deemed exclusive to the other. He stated that he thought those two points covered what he had to say.

The next speaker in opposition was Robert P. O'Keefe, 6372 Torrence Street, Burke, Virginia. He stated that he supported the testimony of Mr. Lynch and would also like to speak about the noise nuisance that would come about from the housing of some 90 children in the child care center. He stated that granting the application would do damage to the land values of the lots and to the residential nature of the area.

The next speaker in opposition was Dorothy Erickson, 6310 Rockwell Road, Burke, Virginia. Ms. Erickson stated that she was representing the Rolling Valley West Civic Association. She stated that although the values of day care centers were recognized, at the regular March meeting, the Civic Association voted unanimously to oppose the center at 9500 Old Keene Mill Road. The primary reasons were the transportation and traffic problems, and that the granting of this use would encourage commercial development along the strip between the two shopping centers, Burke Town Plaza and Rolling Valley West, which is only four blocks long. She presented a letter of opposition to the Board in for the record.

Mrs. Jane Kelsey was the next speaker. She stated that the staff had recommended denial of the application based on two factors. The staff did not believe that it was in conformance with the Comprehensive Plan and there were transportation issues that could cause a conflict in the neighborhood. She stated that if the Board intended to grant the application, the staff recommended the conditions contained on page three and four of the staff report.

Mr. Hyland stated that the staff had done a very thorough job, and the Board had been provided with a sufficient amount of information to make a decision on this matter. He stated that substantial problems and issues had been raised by staff as well as the citizens in connection with the application. Mr. Hyland made a motion that the Board make a decision on the matter today. He stated that the Board had all had time to review the application, the contract, the deed, the covenants, and listen to the testimony of the citizens. Coupled with the extensive staff work that had been done, he stated that he saw no reason not to proceed and decide the matter today. Mr. Yaremchuk seconded the motion.

R E S O L U T I O N

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-S-009 by TDK, INC. under Section 3-103 of the Fairfax County Zoning Ordinance for a child care center for 90 children, located at 9500 Old Keene Mill Road, tax map reference 88-1((3))1, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 40,245 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED for the following reasons;

1. The application is not in conformance with the Comprehensive Plan.
2. The environmental site analysis indicates there is a silt loam soil problem which could cause the playground area to become muddy.
3. There are traffic problems relating to turning movements in and out of the site from Old Keene Mill Road.
4. There are problems sited by the Health Department relative to food, sewer, etc.
5. The property is in an existing residential area and it is not adjacent to any non-residential use.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. DiGiulian being absent)

Page 428, March 30, 1982, Scheduled case of

11:15 A.M. MILLER HOMES, INC./STEPHEN W. & JOANNE W. MILLER, appl. under Sect. 18-401 of the Ord. to allow the resubdivision of two lots into two lots of different configuration, such that proposed lot 19A would contain 48,234 sq. ft. (52,000 sq. ft. min. lot area req. by Sect. 3-E06), located 1950 Limb Tree Ln., R-E(C), Centreville Dist., 27-4((7))12 & 19, 135,445 sq. ft., V-82-C-031.

428

The first speaker, Stephen W. Miller, 10218 Cedar Pine Drive, Vienna, the President of Miller Homes, Inc., presented his application. He stated that the application was for an adjustment to a rear lot line on lot 19 which is adjacent to lot 12 in the subdivision of Cedar Run. He stated that the new square footage of lot 19 would still contain larger square footage than 29 out of the now 37 lots that are now in the Cedar Run subdivision. He stated that the developer informed he and his wife that since the lot was classified as a two-acre lot it was suitable for the ownership of a horse. Later, they discovered that the full square footage was required to keep a horse. Based on the terrain of the lot, it being steeply sloped, they were forced to place the house at the rear of lot 12. This left a rear property distance of 40 feet. When they purchased lot 19, it was the intention to adjust the rear property line to increase the size of the rear property of lot 12 for privacy and aesthetic value. Mr. Miller stated that none of the adjacent property owners had any objections. Mr. Miller stated that he had already spent a considerable amount of money clearing the lot and putting in wood fencing for the horse.

There was no one to speak in opposition and no one to speak in support.

Page 428, March 30, 1982 Board of Zoning Appeals
MILLER HOMES, INC./STEPHEN W. & JOANNE W. MILLER

R E S O L U T I O N

In Application No. V-82-C-031 by MILLER HOMES INC./STEPHEN W. & JOANNE W. MILLER under Section 18-401 of the Zoning Ordinance to allow the resubdivision of two lots into two lots of different configuration, such that proposed lot 19A would contain 48,234 sq. ft. (52,000 sq. ft. min. lot area req. by Sect. 3-E06), on property located at 1950 Limb Tree Lane, tax map reference 27-4((7))12 & 19, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E (C).
3. The area of the lot is 135,445 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in the location of the existing buildings.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

// The Board recessed for lunch at 11:55 A.M. and returned at 12:45 P.M. to continue with the scheduled cases.

Page 429, March 30, 1982, Scheduled case of

11:30 A.M. E & Z LIMITED PARTNERSHIP, appl. under Sect. 18-401 of the Ord. to allow a sign for five (5) individual enterprises within shopping center, to be erected on existing facia at arcade entrance, located 8365 Leesburg Pike, C-7, Centreville Dist., 29-3((1))36, 36A, 36B, 36C & 36D, 9.3059 acres, V-81-C-240. (DEFERRED FROM 3/16/82 TO GIVE THE BOARD MEMBERS A CHANCE TO REVIEW OTHER SIMILAR APPLICATIONS)

429

Mr. Hyland indicated that the Board had received the additional information they had requested and had just received a memorandum from Mr. Yates. He stated that the applicant might want the opportunity to discuss the memo.

Mr. William Naylor, 7761 Clifton Road, Fairfax Station, Virginia, represented the applicant. He stated that he had researched case number V-81-S-194, which was granted by the Board in November 1981. He presented a picture to the Board showing the existing sign located at Rolling Valley Plaza Shopping Center. He stated that he had tried to find signs put up for directional purposes in an arcade area or not visible from the street.

Mr. Hyland stated that by looking at the size of the sign in the picture, he did not feel the applicants' request was unreasonable for the size he wanted for five businesses. Chairman Smith stated that 46.5 sq. ft. was the sign space allowed for that court area. He stated that after staff had researched this application, they had decided a reasonable approach to it would be 86 sq. ft.

Mr. Naylor stated that under Sect. 12-203 of the Ordinance, Par. 1, a building mounted sign will be estimated for square footage of 1.5 times 1 linear foot. He stated that based upon that for his application, he took 105 linear feet and multiplied times 1.5. He stated that he did speak with the sign people and they were willing to compromise and reduce the sign to 120 - 125 linear feet. He stated that that would reduce the application from 150 to 120 linear feet, which is 12 x 10. In response to a question from Chairman Smith, Mr. Naylor indicated that he had based his measurements on the building frontage of the establishment.

There was no one to speak in support and no one to speak in opposition.

Page 429, March 30, 1982 Board of Zoning Appeals
E & Z LIMITED PARTNERSHIP

R E S O L U T I O N

In Application No. V-81-C-240 by E & Z LIMITED PARTNERSHIP under Section 18-401 of the Zoning Ordinance to allow a sign for five (5) individual enterprises within shopping center, to be erected on existing facia at arcade entrance, on property located at 8365 Leesburg Pike, tax map reference 29-3((1))36, 36A, 36B, 36C & 36D, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is C-7.
3. The area of the lot is 9.3059 acres.
4. We have testimony indicating that we do have individual enterprises, five in number, who are located with the shopping center and they are so situated within that center that they do not have frontage visible from the street. The applicant desires to reduce the request for the size of the sign to a sign whose dimensions are 10 x 12 which gives you a total of 120 sq. ft. A total of five businesses would have their names advertised on the sign. The Board has received testimony and input from staff which suggests certain criteria for determining the size of the sign and most recently a memo dated March 30th from Mr. Yates which suggests that the size of the sign be approximately 86 sq. ft. The Board has received further testimony concerning the existence of other signs in the shopping center as well as received information as to signs which have been permitted in other establishments throughout the County in similar circumstances. Based on those facts, I would move the Board permit the applicant to construct a sign which is 10 x 12 ft. or a total of 120 linear ft. for advertising the five businesses. The applicant shall submit a revised plat which shows the size of the sign and the businesses whose names will appear.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

R E S O L U T I O N

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

Page 430, March 30, 1982, Scheduled case of

11:45 A.M. NEIL R. MCDONALD, appl. under Sect. 3-303 of the Ord. for a home professional office (attorney), located 1506 Chain Bridge Rd., R-3, Dranesville Dist., 30-2((7))(2)5 & 6, 8,078 sq. ft., S-82-D-011. (DEFERRED FROM 3/16/82 FOR FULL BOARD).

11:45 A.M. NEIL R. MCDONALD, appl. under Sect. 18-401 of the Ord. to allow a home professional office on a lot containing 8,078 sq. ft., and having width of 50.94 ft., and in a house with deck located 4.7 ft. from side lot line (10,500 sq. ft. min. lot area and 80 ft. min. lot width req. by Sect. 3-306; 6 ft. min. side yard for deck req. by Sects. 3-307 and 2-412), located 1506 Chain Bridge Rd., R-3, Dranesville Dist., 30-2((7))(2)5 & 6, 8,078 sq. ft., S-82-D-011. (DEFERRED FROM 3/16/82 FOR FULL BOARD).

Mr. Neil McDonald, 1506 Chain Bridge Road, McLean, presented his applications. He submitted a letter in support from one of the adjacent property owners facing his property from across the street. He stated that initially he had obtained a special permit for an antique shop in an older structure on a nearby lot. He stated that a variance had been obtained for the garage which was used for storage for goods sold out of the shop that had been placed on layaway. He stated that he and his wife lived next door to the antique shop and this is where he wanted the proposed home professional office.

Mr. McDonald stated that his home had been purchased and moved from another lot to this area, and that many improvements had been made on it. He stated that he had many problems with the contractors, one point of contention being the placement of the deck. Since then, there have been court proceedings and the matter has been settled.

Mr. McDonald stated that one of the reasons he wanted the home professional office is that he is involved actively with the antique shop and the closer he can be to it, the more efficiently it can be operated. Another reason, is that the configuration of the building lends itself very well to a home professional office. He stated that when the building was moved, a basement was excavated, and an entrance was placed to the back of the house. Mr. McDonald stated that he was not coming into the proposed office with any large existing practice. He stated that he would be spending a large majority of his time with the business on the adjacent property. To address the variance, he stated that he owned 6 adjacent lots, but they could not be considered in figuring the square footage. He stated that this property was surrounded on many sides by commercial activity.

There was no one to speak in support and no one to speak in opposition.

R E S O L U T I O N

WHEREAS, Application No. S-82-D-011 by NEIL MCDONALD under Section 3-303 of the Fairfax County Zoning Ordinance for a home professional office (attorney), located at 1506 Chain Bridge Road, tax map reference 30-2((7))(2)5 & 6, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 1982; and

431

R E S O L U T I O N

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 8,078 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be 9:00 A.M. to 5:00 P.M. with an occasional weekend or evening appointment.
8. There shall be three parking spaces, one reserved for the owner-occupant and the other two for clients.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

R E S O L U T I O N

In Application No. V-82-D-013 by NEIL R. MCDONALD under Section 18-401 of the Zoning Ordinance to allow a home professional office on a lot containing 8,078 sq. ft., and having width of 50.94 ft., and in a house with deck located 4.7 ft. from side lot line (10,500 sq. ft. min. lot area and 80 ft. min. lot width req. by Sect. 3-306; 6 ft. min. side yard for deck req. by Sects. 3-307 & 2-412) on property located at 1506 Chain Bridge Road, tax map reference 30-2((7))(2)5 & 6, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 8,078 sq. ft.
4. That the applicant's property is long and narrow and is a substandard lot.

432

RESOLUTION

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent)

Page 432, March 30, 1982, After Agenda Items

The Board approved the minutes for June 10, 1980, as presented.

// There being no further business, the Board adjourned at 2:05 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith
DANIEL SMITH, CHAIRMAN

Submitted to the Board on Dec. 20, 1983

APPROVED: Jan. 10, 1984
Date

433

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 6, 1982. The following Board members were present: Daniel Smith, Chairman; John Yarechuk; Gerald Hyland and Ann Day. (Mr. John DiGiulian was absent).

The Chairman called the meeting to order at 10:25 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. Knollwood Baptist Church, appl. under Sect. 6-303 of the Ord. to amend S-133-77 for church and related facilities to permit small additions to existing church building, located 10000 Coffer Woods Rd., PRC, Springfield Dist., 78-3((1))40, 5.00162 acres, S-82-A-002. (DEFERRED FROM 2/23/82 FOR NOTICES).

Mr. W. P. Parkerson, Pastor, represented the church. He stated that they were requesting permission to increase four classrooms in the existing building. Mr. Parkerson stated that the church had submitted its plans and it did not involve changing the structure of the building. The request was merely expanding some classrooms.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application S-82-A-002 by KNOLLWOOD BAPTIST CHURCH under Section 6-303 of the Fairfax County Zoning Ordinance to amend S-133-77 for church and related facilities to permit small additions to existing church building, located at 10000 Coffer Woods Drive, tax map reference 78-3((1))40, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 6, 1982 being deferred from February 23, 1982 for notices; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is PRC.
3. That the area of the lot is 5.00162 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 434, April 6, 1982, Scheduled case of

10:15 A.M. HUNTER MILL SWIM & RACQUET CLUB, appl. under Sect. 3-103 of the Ord. to allow community club, including meeting hall, swimming pools & tennis court, Sunnybrook Subd., R-1, Centreville Dist., 27-2((1))pt. 30, 2.9991 acres, S-82-C-014.

&

10:30 A.M. HUNTER MILL SWIM & RACQUET CLUB, appl. under Sect. 18-401 of the Ord. to allow community club having fence around tennis courts 30 ft. from each of two street lines (40 ft. min. front yard for structures other than single family dwellings req. by Sect. 3-107), and with temporary road and parking lot having gravel surface (dustless surface req. by Sect. 11-102), Sunnybrook Subd., R-1, Centreville Dist., 27-2((1))pt. 30, 2.9991 acres, V-82-C-018.

Mr. Al Woody of 1715 Fox Mill Court in Vienna represented the swim club. Mr. Woody was President of the homeowners association. Mr. Woody informed the BZA that they were requesting a special permit which would create a non-profit community group with approximately 400 members. The club would be located on land designated as open space in Sunnybrook Subdivision. There would be swimming and tennis activities. Mr. Woody stated that the club would have phase type construction. They wanted to get underway by summer. They would build a small childrens wading pool. The surrounding land had yet to be developed. Mr. Woody stated that the open space had been set aside as a proffer several years ago. Now they wanted to create the swim club.

Mr. Woody stated that the land was R-1 residential. He understood that there was a request to change the zoning in the near future. Mr. Woody stated that the staff had prepared a rather long and extensive staff report on this matter. Mr. Hyland stated that he had a question reference the staff report and the staff recommendation in terms of the number of conditions that they suggested for the granting of the permit. He asked if Mr. Woody agreed with the recommended conditions and if not, what were the ones he disagreed with. Mr. Woody advised the Board that he appreciated the time and effort spent on the applications. Mr. Woody stated that the club concurred with all the conditions but 9, 11 and 12. With respect to condition 9, Mr. Woody stated that the club wanted to work out the solution with the Health Department. However, the club was in agreement that discharge from the pool be treated on the site and then slowly released by the way of a holding tank. With regard to no. 11, Mr. Woody stated that the club would comply with the requirements as required by the Department of Environmental Management. Mr. Woody stated that the club wanted to work with DEM and their own engineer to arrive at solutions with regard to condition no. 12. Mr. Woody stated that a trail would encourage uses beyond which they had intended. They envisioned a footpath but not a bridle path as they felt it would encourage mo-peds, etc. Mr. Hyland stated that mo-peds would not be allowed legally. Mr. Woody stated that the club facility would be usable only during summer and fall. The asphalt would encourage year round activity. Mr. Hyland inquired as to where it would be located and was informed that the trail would extend down 200 ft. to Stone Ridge Subdivision. Mr. Hyland inquired if that was part of the County trail and was informed it was only an easement to allow them use the trail.

Mr. Hyland inquired if there were any other conditions that the club disagreed with. Mr. Woody responded that the only other item was the concern of the third tennis court and how close it was to the street. For the sake of time, he asked the Board to defer that requirement for the variance. Mrs. Day inquired as to what Mr. Woody meant. He stated that he would like approval for the facility as planned minus the third tennis court. He indicated that the club would come back at a later date. Mr. Woody further explained that the club's original plan was to have three courts. Because of financial plans, they had decided to put in one and grant the land for the other two. The variance was created for when they put a fence around the third tennis court, it would lie within the 30 ft. from the lot line. Therefore, they had submitted the variance request to allow that fence to be less than 30 ft. Chairman Smith inquired as to why Mr. Woody did not eliminate the third tennis court from the application entirely as he had a problem with it. Mr. Woody stated that they had eliminated it but they wanted to be able to come back at a later date.

Chairman Smith stated that the club had withdrawn the request for the third tennis court and the fence and were not requesting any setback variance at this point. He inquired if the club was still going to pursue the dustless surface variance and was informed by Mr. Woody that they were. Mr. Woody stated that the club would go forward with that part of the request and concurred with the staff recommendations on the variance. Mr. Hyland stated that the BZA had a recommendation that the variance be granted-in-part reference to the dustless surface. Chairman Smith stated that there were certain provisions for paving and deceleration lanes and sight distances, etc. Chairman Smith stated that the Board had agreed to eliminate the third tennis court. He asked if the other two courts were going to remain in the same location. Mr. Woody stated they would remain as located. He stated that the club would not move them around.

Mr. Woody stated that part of the special permit application was for a meeting hall. There was concern on the amount of parking required as the club did not have the funds to upgrade the entire barn. He asked that the Board allow the meeting hall to be deferred until a later date also. Chairman Smith advised Mr. Woody that the club would have to come up with a new plat. Mr. Hyland stated that the BZA would not have to change the plat as the existing barn was shown. Chairman Smith inquired as to what the club intended to do with the barn. Mr. Woody stated that they would secure the portion not being used. They intended to use the lower portion. Mr. Covington explained that the club wanted to be able to use the lower portion until they could renovate the top. They needed to get the funds to renovate it. Chairman Smith stated that he did not think the club could meet the code in order to use the barn. Mr. Covington stated that the second story was ground level on one side.

Chairman Smith inquired as to the number of members involved. Mr. Woody stated that with the temporary use they would hold the membership to 300. When they moved to the permanent facility, they would increase to 400 members. Chairman Smith advised that the club would have to come back to the BZA before they increased to 400. Mr. Hyland questioned a staff recommendation. Mrs. Kelsey stated that the staff had only recommended that the BZA approve 300 family memberships during the time that the club was using the temporary park area. When they want to go beyond 300, they should put in the permanent parking to provide for 400 members. Mr. Hyland inquired if the staff was recommending that the permit be granted for 300 members until such time as the parking was provided and at that point in time, the club would be permitted to have 400 memberships which was what they were asking for in the permit. Chairman Smith stated that the temporary parking arrangement was the one thing that needed the dustless surface. Mrs. Kelsey advised the Board that the staff had recommended approval for three years or until such time as the club wanted to increase the membership, whichever came first. Mrs. Kelsey stated that the club had agreed to that by letter dated March 29, 1982 which was included in the staff report.

There was no one else to speak in support of the application. The following persons spoke in opposition. Mr. Richard Cockrell informed the Board that he lived 1,000 ft. northwest of the existing property. He was not opposed to the application at all and was 100% for it. The only thing was he had a question about the dustless surface during the summer when it kicked up. He inquired as to what would keep the dust down and whether the club would be allowed to spread oil to keep the dust down. Chairman Smith advised that the club would have to use some method to keep the dust down. He could do it by oil or water. There were wells on the property. Chairman Smith stated that it could probably be accomplished through watering. Mr. Hyland inquired as to what could be done to alleviate the problem from the staff's point of view. Mrs. Kelsey stated that she could not answer that question. Mr. Covington stated that paving the first 100 ft. would satisfy Mr. Cockrell's problem. Mr. Cockrell stated that he did not know whether it would get to be a problem. However, he asked who would he turn to and what could he do at that time if it was a problem. Mr. Cockrell advised the Board that the swim club had worked very hard and it seemed to be an asset to the community. Chairman Smith stated that the use of water was the best way to solve the dust problem. He stated that gravel was practically dust free but it did not meet the requirements of the Ordinance itself. Mr. Covington advised the applicant that the State used calcium chloride. Chairman Smith stated that the State was using water now.

Mr. Hyland inquired as to what obligation the applicant had to correct the situation if it was not attached as a condition so that it could be remedied by DEM. Mr. Yaremchuk stated that anything under site plan had to be properly maintained. Mrs. Day inquired if there was any paving at the entrance. Mrs. Kelsey stated that there would be a deceleration lane to Springhouse Road for about 50 ft. Mr. Hyland inquired as to staff's recommendation on the entranceway. Mrs. Kelsey advised that the staff had gone along with the DEM comments regarding the deceleration lane and the paving of the entrance as shown on the plat. Chairman Smith stated that there was not any distance shown on the plat with respect to the paving. Mr. Covington advised the BZA that they could put any distance they wanted on the granting of the variance. Chairman Smith suggested that the BZA set a condition that the variance be granted only for during the temporary period of time and the applicant had to provide adequate dust protection in the form of water. Then he suggested that Mr. Cockrell contact the swim club if the dust became a problem. If he did not get any satisfaction, he should then contact the Zoning Enforcement Division. Chairman Smith stated that the enforcement section had a right to enforce the condition if it was stated like that. Mrs. Kelsey corrected her earlier comment about the distance of paving and stated that it was actually about 35 ft. into the property as shown on the plat.

The next speaker in opposition was Mr. Arthur Davis who owned property adjacent to the pathway. He agreed with the proposal but he also agreed with Mr. Cockrell that he wanted to know that the pathway was treated properly. Mr. Hyland inquired about the paving of the trail and the suggestion that it be done. Mrs. Kelsey stated that the suggestion had come from DEM that it be provided on the marked up site plan. Mrs. Day inquired if the staff had discussed with the applicant his comment that should the trail be paved, it would pose a problem with the motor bikes and people not authorized to use the property might trespass. Mrs. Kelsey stated that they had discussed that with the applicant and recognized that it could be a potential problem. She stated that the trail was to be a walkway to the pool. They wanted an adequate trail that would not be muddy during the rainy season. Chairman Smith stated that the trail needed to be of a surface other than gravel.

During rebuttal, Mr. Woody stated that the major concern seemed to be the club's desire to maintain surfaces that were not dust free. He stated that the club members were also neighbors of the area and did not want to live in a dirty place. He stated that the club had worked with the Cockrells and the Davises and they did not want to destroy the degree of cooperation. Mr. Woody stated that the club wanted a woodchip path which would not be muddy and would not hurt anyone's feet. He stated that the club would police the area in regard to the temporary access. The access was 35 ft. wide and 39 ft. off of the shoulder of Hunter Mill Road. The deceleration was about 12 ft. with about a 35 ft. radius that formed the start of the entrance way. Mr. Woody stated that the club had been guided by VDH&T. He stated that they would police the entrance to make sure there was not any dust. Chairman Smith stated that the club could use water to alleviate the problem. Mr. Hyland inquired as to if water did not solve the problem, what would the club do. Mr. Woody stated that the members lived in the area also. He stated that they work with DEM.

Chairman Smith closed the public hearing. He stated that the Board could add a condition with respect to the dust problem.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-C-014 by HUNTER MILL SWIM & RACQUET CLUB, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to allow community club, including meeting hall, swimming pools & tennis courts (applicant withdrew request for meeting hall and third tennis court at public hearing), located at intersection of Springhouse Drive & Hunter Mill Road, tax map reference 27-2((1))pt. 30, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 6, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the contract purchaser.
2. That the present zoning is R-1.
3. That the area of the lot is 2.9991 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application with the deletion of the one tennis court nearest Springhouse Drive and the proposed use of a meeting hall. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. All parking shall be on-site and until such time as the permanent 30 space parking lot is constructed, the club shall be limited to 300 family members and shall not have official swimming meets or any large events which might create an inadequacy of parking on-site.

7. Transitional screening 1 and a barrier as required by and in accordance with the provisions of Article 13, shall be provided along the lot line abutting the Wayside Subdivision. Deferral is allowed along all other lot lines until such time as a final subdivision plan is approved and grading begins for the proposed residential subdivision. At such time, a barrier should be provided to screen the swimming pool abutting residences. Should the adjacent land be rezoned to an industrial district, no transitional screening or barriers will be required. The use of existing vegetation shall be permitted subject to the approval of the Fairfax County Arborist.
8. A right turn deceleration lane on Hunter Mill Road shall be provided in accordance with the standards and specifications of VDH&T.
9. All discharges from the pool shall be treated so as to meet applicable State and Federal water quality standards as specified by the Virginia State Water Control Board and/or by the Fairfax County Health Department. To this end, the pool shall be designed so that the waters can be treated while detained on site and then slowly released to the stream, e.g. through the use of a holding tank.
10. The Fairfax County Health Department shall be notified before any pool waters are discharged during any draining or cleaning operation.
11. Stormwater management measures and best management practices shall be implemented.
12. A TX-1 Type 1 Trail shall be provided in accordance with the Public Facilities Manual in the location shown on the plat submitted with the application.
13. Hours of operation shall be 8:00 A.M. until 9:00 P.M. for the swimming pool and 7:00 A.M. until 10:00 P.M. for the tennis courts. After-hour parties and activities shall be governed by the following:
(a) limited to six (6) per season.
(b) limited to Friday, Saturday and pre-holiday evenings.
(c) shall not extend beyond 12:00 midnight.
(d) shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
(e) requests shall be approved for only one (1) such party at a time and such requests will be approved only after the successful conclusion of a previous after hour party.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 with 1 abstention (Mr. Yaremchuk)(Mr. DiGiulian being absent).

Page 437, April 6, 1982 Board of Zoning Appeals
HUNTER MILL SWIM & RACQUET CLUB, INC.
RESOLUTION

In Application No. V-82-C-018 by HUNTER MILL SWIM & RACQUET CLUB, INC. under Section 18-401 of the Zoning Ordinance to *allow community club having fence around tennis courts 30 ft. from each of two street lines (40 ft. min. front yard for structures other than single family dwellings req. by Sect. 3-107) and with temporary road and parking lot having gravel surface (dustless surface req. by Sect. 11-102), on property located at intersection of Springhouse Drive & Hunter Mill Road, tax map reference 27-2((1))pt. 30, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 2.9991 acres.
4. That this is a non-profit community use. This is a temporary variance.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED IN PART *(to allow community club with temporary road and parking lot having gravel surface) with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Board of Zoning Appeals — Board of Zoning Appeals
HUNTER MILL SWIM & RACQUET CLUB, INC.
(continued) RESOLUTION

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.
3. The paved entrance from Hunter Mill Road and the deceleration land shall be paved a minimum of 50 ft.
4. The dustless surface is granted for a period of three years or at such time as the applicant desires to increase the membership beyond 300, whichever occurs first.
5. The two tennis court requests negates the need for a variance on the third tennis court.
6. The use of the lower level of the barn is granted.
7. If dust becomes a problem, it shall be alleviated by such procedures as required by the Director of Environmental Management.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 with 1 abstention (Mr. Yaremchuk)(Mr. DiGiulian being absent).

Page 438, April 6, 1982, Scheduled case of

10:40 A.M. THERESA M. DAVIS, appl. under Sect. 18-401 of the Ord. to allow construction of a detached garage to 1.3 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 7233 Wilburdale Dr., R-1, Annandale Dist., 71-3((9))72, 21,800 sq. ft., V-82-A-019.

Mr. Dana Davis of 7233 Wilburdale Drive informed the Board that he had some things in his back yard that needed a garage. He stated that he was going to remove some trees in the back yard but he tried to build in the back yard, the drainage away from the house would be rough. Chairman Smith inquired as to why a 42 ft. garage was necessary. Mr. Davis stated that he owned two cars plus lawn and gardening equipment. He stated that his mother did ceramic work and wanted to have an area in the garage. Mrs. Day asked if the products were sold and Mr. Davis stated they were not. Mr. Hyland stated that the length of the garage was not the issue. Chairman Smith stated that the length had more impact to the variance. Mr. Davis informed the Board that he had obtained support statements from nine of the homeowners including lot 73. Mr. Hyland inquired if there were other garages such as this one and Mr. Davis stated that he believed there were. Mrs. Day stated that the existing shed was to be removed. She asked what would be opposite the proposed garage on lot 73. Mr. Davis responded that it was bedroom areas upstairs with a utility room downstairs. Mrs. Day inquired as to the distance of the adjacent house from the property line and whether they had a garage. Mr. Davis stated that the house was 30 ft. from the line and did not have a garage. Mrs. Day asked how the applicants would get around to the other side of the garage if it was only 1.3 ft. from the side line. Mr. Davis stated that there would not be any problem based on the way they planned to build the garage. Mrs. Day inquired about the roofline. Mr. Davis stated that he planned to run a gutter to the back of the garage. Mrs. Day asked what the terrain was like. Mr. Davis stated that water did not carry over into the neighbor's yard. He stated that the proposed to use aluminum siding and guttering on the garage for easier maintenance. Mrs. Day stated that the applicants would have to go onto the adjoining property just to construct the garage.

Mr. Chip Paciulli spoke in support of the application. He informed the Board that he was assisting Mr. Davis. He presented the Board with photographs of the elevation in the rear yard. The yard was flat with about a 1 to 1½% slope away from the patio. He stated that if a structure was put in that area, it would create a problem around the pation. Chairman Smith stated that it might create problems but it could be done. Mr. Paciulli stated that DEM wanted 2% slope for drainage. Mr. Paciulli stated that the applicants were concerned about the closeness to the adjacent property but the neighbors did not have any problem with the location.

There was no one else to speak in support and no one to speak in opposition.

Page 438, April 6, 1982 — Board of Zoning Appeals
THERESA M. DAVIS

RESOLUTION

In Application No. V-82-A-019 by THERESA M. DAVIS under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage to 1.3 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), on property located at 7233 Wilburdale Road, tax map reference 71-3((9))72, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

RESOLUTION

439

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 21,800 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property in that the house was situated on the back 2/3 of the lot. It it had been located closer to the street, the applicant would have ample room to build a garage in the rear yard. In addition, there are trees in the back yard which the applicant does not wish to destroy. The topography is very flat.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is *GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion *FAILED by a vote of 2 to 2 (Mr. Smith & Ms. Day)(Mr. DiGiulian being absent).

Page 439,April 6, 1982, Scheduled case of

10:50 A.M. KENNETH J. MYERS, appl. under Sect. 18-406 of the Ord. to allow partially constructed addition to dwelling to be completed and to remain 4.3 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 6318 Nicholson St., R-3, Mason Dist., 51-3((13))20, 19,517 sq. ft., V-82-M-020.

Mr. Ken Myers of 6318 Nicholson Street in Falls Church informed the Board that the Code called for a 12 ft. setback from the lot line. He wanted to come to 4.3 ft. of the side lot line. He stated that he was matching the design of the garage and it projected about a half foot. Mr. Myers stated that he had lived in the County for eight years. This was his first home. He stated that he had made an error as he did not realize that a building permit was required for the addition. Mr. Myers stated that the error had been reported by his neighbor at the rear who called the Supervisor for the District who then called the Zoning Office. Mr. Myers admitted he had made a mistake. Of the five people surrounding his property, three had signed a petition in support of the application. The fourth person did not reside at the property and Mr. Myers had not received any word from him. Mr. Myers informed the Board that his property was shaped like a pie. The home was to the rear. There was no attic or basement. Mr. Myers stated that he wanted to add 9 ft. to the garage for storage and attic space. Mr. Myers stated that he did not have any other place to construct the addition. He was not aware of any negative impact to the area. Mr. Myers stated that he would take proper precautions to see that the addition was guttered. He stated that the property all sloped uphill. His neighbors were uphill. The addition would only be 8 ft. tall at the corner and 14 ft. tall at center. Mr. Myers stated that the addition would not obstruct the view. Mr. Myers stated that he had a 6 ft. fence along the property line. The garage would be cut stone and panel with shingles that would match the rest of the house.

Mr. Myers stated that he was aware ignorance was not an excuse. However, he hoped that he had taken the right steps since that time. He stated that the cost of materials was very important to his plan of improving the rest of his home. Mr. Hyland inquired as to who was building the addition. Mr. Myers stated that he was building it himself and did not know that it needed a building permit. The concrete block was done by masoners. The only remaining construction was the roof and the veneer of cut stone. Mr. Hyland inquired if the architect had advised Mr. Nyers in this project. Mr. Myers stated that he had grown up in the country where a person went out and built what he wanted if he could afford it. Mr. Myers stated that this was the largest home he could afford but he wanted to improve it. Mr. Hyland inquired if a building permit was discussed when the masons were hired. Mr. Myers stated that he thought a building permit was only necessary when building a home. Mr. Hyland inquired if

there was anyone opposed to the addition. Mr. Myers stated that the neighbor who reported him was opposed to it. He stated that he had not realized the problem until the neighbor expressed concern. Chairman Smith inquired if the mason contractor had dug the footings and poured the form. Mr. Myers stated that he had dug the footings which were a good 18" thick. He stated that he used more cement than he needed. Mr. Myers informed the Board that he had lived at the home since November of 1980.

Mr. William M. Thornton of 3041 Hazelton Street informed the Board that Mr. Myers had aired his request before the Buffalo Hills Civic Association and there were not any objections. The property was pie-shaped and had unusual setbacks. Mr. Thornton stated that Mr. Myers could move it but it might not be an asset to the neighborhood. Chairman Smith inquired if Mr. Thornton thought the addition was a garage as there were not any garage doors to it. Mr. Thornton replied that the association was most interested in what the exterior appearance would be to the surrounding area. Mrs. Day stated that she understood the applicant to say that one part of the structure would be a breakfast room addition off of the kitchen. She did not see how it could be a garage.

The next speaker was Robert Beers of Supervisor Davis' office. He stated that Supervisor Davis was a former resident of the area and supported the variance application. Supervisor Davis had met with the neighbors and was fully satisfied that the problem had been resolved and that the structure would be an asset to the community.

There was no one else to speak in support and no one to speak in opposition to the request. Mr. Hyland questioned whether Mr. Myers was going to use the addition as a garage or whether it was just an addition to the house. Mr. Myers stated that it was a garage addition added to the length of the garage. His intent was to use the first 2/3 of the garage as a workshop for storage, etc. He intended to partition off the back portion which bordered the kitchen wall in order to use it for a breakfast room. Mr. Hyland stated that there did not seem to be a problem with the application since Mr. Myers had explained what he was going to do with the addition. Mr. Myers stated that the portion he planned to use for the breakfast room was not more than 12 ft. from the lot line. Mr. Yaremchuk inquired as to how much of the structure was already up and what it would do to Mr. Myers if it was not granted. Mr. Myers stated that he had already spent $3,000. He indicated that the most important thing was his anticipated remodeling of the house. He stated that he did want to be a good neighbor. Mrs. Day stated that it was nice to have a breakfast room and she could see where the applicant would need it. Mrs. Day stated that she wanted to work something out for the applicant but she also wanted to cover it in the future so if he sold the property he would not run into a problem. Chairman Smith stated that there would not be a problem if it met the setback. Mr. Yaremchuk inquired as to how the applicant would run into trouble as the title searches did not put such information in their reports. Chairman Smith stated that he raised the question because the entire addition was marked garage on the certified plat. He stated that only that area that met the setback requirements could be used for living purposes. Mr. Hyland stated that would eliminate any further problems.

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. V-82-M-020 by KENNETH J. MYERS under Section 18-406 of the Fairfax County Zoning Ordinance to allow partially constructed addition to dwelling to be completed and to remain 4.3 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 6318 Nicholson Street, tax map reference 51-3((13))20, County of Fairfax, Virginia, has been properly filed in accordance with applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1982; and

WHEREAS, the Board has made the following findings of fact:

THAT non-compliance was no fault of the applicant. He purchased the property about a year ago and was not aware of the requirement to get a building permit and he was not aware of the setback restrictions that were applicable. It's clear that the persons who constructed the building were not contractors but only employees hired to do the work.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the granting of this variance will not impair the intent and purpose of the Zoning Ordinance, not will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. The portion of the labelled garage addition which is located to the rear of the garage at the rear of the existin- house line shall be utilized for other purposes than a garage, namely, a breakfast nook. This breakfast nook is in an area that does comply with the existing setback.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 0 with 1 abstention (Mr. Smith)(Mr. DiGiulian being absent).

Page 441,April 6, 1982, Recess

At 12:00 p.m., the Board of Zoning Appeals recessed the meeting for lunch. The Board reconvened the meeting at 1:05 P.M. to continue with the scheduled agenda.

//

Page April 6, 1982, Scheduled case of

11:00 A.M. DECKER ANSTROM & SHERRON HIEMSTRA, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling to 4.2 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-207 & 2-412), located 3416 Sharon Chapel Rd., R-2, Lee Dist., 82-4((16))4, 15,731 sq. ft., V-82-L-021.

Mr. Decker Anstrom of 3416 Sharon Chapel Road informed the Board that he was requesting a variance in order to build a deck 4.2 ft. from the rear lot line. The staff report had noted that he had a very shallow lot. Mr. Anstrom stated that he had lived at the property since 1979. The house had been set far back on the lot. As a result, to build an adequate deck to give privacy and enjoyment would require a variance. Mr. Anstrom stated that the deck would improve the area. The property to the rear was a church and was separated by a fence and screening. Mr. Anstrom stated that the area would be improved and would not affect anyone. Mr. Anstrom stated that the present deck was very small and had been put in by the previous owners. The original deck would be replaced. Mr. Anstron explained to the Board that he had examined the possibility of placing the deck elsewhere. However, to the east, it would be very close to the line and would requiring taking out about 15 trees which would create a drainage problem. To the west was a sewer easement. Mr. Anstrom stated that there was an aesthetic point to placing the deck where it was proposed.

Mrs. Day questioned whether Mr. Anstrom had a garage and was informed he did not. He stated that if he had a garage, it would have to built to the west of the sewer easement. Mrs. Day inquired as to why the applicant did not build the deck parallel wiht the rear lot line over the existing deck. He replied that he had thought of that but his proposal made more sense. He stated that he would run into some problems with the sewer easement on the side. Second, he felt he would lose soem privacy if it was extended out into the open yard. In addition, it would change the character of the yard and the neighborhood. Mrs. Day stated that it would not touch the easement if it was the same size. Mr. Anstrom stated that it would change the character of the house and destroy the privacy. Mrs. Day stated that was not a hardship when the applicant could build out on the side. Mr. Anstrom stated that the dining room was located at the right rear corner. He wanted to have the dining room open up with doors. Mrs. Day stated that the applicant could cut the proposed deck to 6 feet and then he would be 10.2 ft. from the house to the rear lot line and not need as much of a variance. She asked if the applicant could live with that situation. Mr. Anstrom replied that 6 ft. was too small for what he had in mind. He wanted to have the 12 ft. deck. He informed the Board if the house was not as far back on the lot as it was, the variance would not be as difficult. Six foot would be pretty narrow. Mrs. Day stated that she did not object to the deck.

There was no one to speak in support and no one to speak in opposition. Mr. Yaremchuk stated that he would like to give the applicant a choice or deny the application. Chairman Smith stated that the applicant had not justified the request as far as he was concerned. Mr. Yaremchuk stated that the deck would not hurt anything as there was only parking for the church next door. Chairman Smith stated that it hurt the Ordinance. Mrs. Day stated that she felt the applicant was asking for a lot to have the deck that big that far back. Chairman Smith stated that there was room for the deck all the way across one end of the house. There was a deck there already. He stated that was the way the house was situated and that was the way it had been utilized since the house was constructed. Mrs. Day stated that she did not like granting in part.

Mrs. Day moved that the matter be deferred in order to allow time for more thought. Mr. Hyland seconded the motion. Mr. Hyland made a submotion that on the day the matter was scheduled that the Board take it up as the first item on the agenda. He also stated that the absent Board member should be allowed to listen to the tapes and participate in the decision. Mr. Yaremchuk seconded the motion. It was the consensus of the Board to defer the variance until April 20, 1982 at 10:00 A.M. for a full Board.

//

Page 442, April 6, 1982, Scheduled case of

11:10 A.M. EDWARD R. CARR & JOHN E. COWLES, TRUSTEES, appl. under Sect. 3-503 of the Ord. for community tennis courts, located 4300 Franconia Rd., R-5, Lee Dist., 82-1((1)) pt. of 7, 107.9 acres, S-82-L-015.

442

Mr. Tom Davis of 7535 Little River Turnpike in Annandale represented the applicants. In response to questions from the Chairman, Mr. Davis stated that the owner of the subject property at the time of application was Leehigh Realty. Mr. Carr and Mr. Cowles were the contract purchasers. Mrs. Day inquired if the the contract was subject to anything. Chairman Smith stated that it would not be because the zoning had already taken place.

Mr. Davis informed the Board that the two tennis courts would be built on the property's open space. They would not be lighted and would only be used for the exclusive use of the 276 homes and their guests. Most of the operating hours would be daylight only. There would not be any lights at all. The tennis courts had been included in the rezoning plan and were proferred. The courts had been approved by the Design Review Branch of DEM.

Mr. Yaremchuk inquired as to the number of parking spaces for the courts. Mr. Davis replied there were two spaces for each unit with four additional spaces. The courts would be within easy walking distance. The entire tract consisted of 116 acres. Chairman Smith stated that the staff report had indicated 126 acres. Mr. Covington stated that the applicant's statement indicated 107.9 acres. Chairman Smith inquired as to the correct area. Mr. Davis stated that there was 116 acres under the R-5 subdivision with 45 acres to be given to the Fairfax County Park Authority. Chairman Smith stated that the Board had the right plat in front of it. He informed the staff to try to establish the correct land area in the findings of fact.

There was no one else to speak in support and no one to speak in opposition.

Page 442, April 6, 1982 Board of Zoning Appeals
EDWARD R. CARR & JOHN E. COWLES, TRUSTEES

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-82-L-015 by EDWARD R. CARR & JOHN E. COWLES, TRUSTEES under Section 3-503 of the Fairfax County Zoning Ordinance to permit community tennis courts located at 4300 Franconia Road, tax map reference 82-1((1))pt. 7, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 6, 1982; and

WHEREAS, the Board had made the following findings of fact:

1. That the applicant is the contract purchaser.
2. That the present zoning is R-5.
3. That the area of the lot is 107.9 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Specia Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

AND, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without futher action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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 during the hours of operation of the permitted use.

R E S O L U T I O N

443

6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of memberships shall be 276 families from within the subdivision as shown on the plat.
8. The hours of operation shall be daylight hours only.
9. The number of parking spaces shall be four (4) as the courts are within walking distance.
10. This special permit shall be subject to all proffers agreed to at the time of the rezoning.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 443, April 6, 1982, Scheduled case of

11:30 A.M. JOHN W. HEROLD, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 4.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407), located 3013 Woodlawn Ave., R-4, Providence Dist., 50-3((6))173, 7,200 sq. ft., V-82-P-022.

Mr. John Herold of 3013 Woodlawn Avenue informed the Board that his request was for a one room one-story addition 9.9 ft. wide by 17.7 ft. long 10 ft. high which would extend to 4 ft. of the side lot line. The addition would be a family room. Mr. Herold stated that his house was a Cape Cod and there was not any basement. There was very little inside play area for his small children. He planned to add a bathroom downstairs also. Mr. Herold stated that it was not feasible to put the addition at the back because the ground sloped towards the house. Mr. Herold stated that if he built in the back, it would be difficult to bring equipment around and it would take up the patio and reduce the play area. He stated that his lot was substandard by today's standards. It was only 60 ft. wide. If he had a 70 ft. lot, he would not need a variance. Mr. Herold presented the Board with a plat of his neighbor's house showing a porch which was within 5 ft. of the northern property line. There were only two windows facing the addition. One was a bathroom. His neighbors had a basement so the windows were well off of the ground. Mr. Herold asked the Board to grant his variance.

Mr. Yaremchuk stated that the lot was narrow and appeared to be a substandard lot. He stated that this was one of the oldest subdivisions in the County.

There was no one else to speak in support and no one to speak in opposition.

Page 443, April 6, 1982 Board of Zoning Appeals
JOHN W. HEROLD

R E S O L U T I O N

In Application No. V-82-P-022 by JOHN W. HEROLD under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 4.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407) on property located at 3013 Woodlawn Avenue, tax map reference 50-3((6))173, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 7,200 sq. ft.
4. That the applicant's property is a substandard lot both in lot width and lot area. The applicant's property has exceptional topographic problems in that the lot slopes downward towards the house.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

RESOLUTION

444

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to and expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 444, April 6, 1982, Scheduled case of

11:40 A.M. COURT HOUSE COUNTRY CLUB OF FAIRFAX, INC., appl. under Sect. 3-103 of the Ord. to amend S-168-77 for country club to permit replacement of maintenance building destroyed by fire with a slightly larger metal building at a new location, located 5110 Ox Rd., R-1, Springfield Dist., 68-1((1))17, 18 & 20, 153.2074 acres, S-82-S-004. (DEFERRED FROM 3/9/82 FOR NOTICES).

Mr. Stephen L. Best, an attorney located on University Drive in Fairfax, represented the applicant. He presented the Board with pictures of the property. Mr. Best stated that during the past winter, a shed had been destroyed by fire and now the club was seeking to rebuild the shed in the same general area. There had been a drainage problem in the old location so the proposed shed was to be relocated 30 ft. away. The old shed had been 30x60 and the new shed was 30x80. Chairman Smith inquired if the shed met the setback requirements. Mr. Best responded that the shed was a one story building located down in the valley. He stated that it was barely visible from the yards across the street. Chairman Smith inquired if the shed was already constructed and was informed it was not.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-S-004 by COURT HOUSE COUNTRY CLUB OF FAIRFAX, INC. under Sect. 3-103 of the Fairfax County Zoning Ordinance to amend S-168-77 for country club to permit replacement of maintenance building destroyed by fire with a slightly larger metal building at a new location, located at 5110 Ox Road, tax map reference 68-1((1))17, 18 & 20, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 6, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 153.2074 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated in the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.

445

3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of golf memberships shall be 500 with an overall membership of 650.
8. All other requirements of S-168-77 shall remain in effect.
9. The hours of operation shall be 7 A.M. to 10 P.M., seven days a week.
10. There shall be an automatic timing device on the lights for the tennis courts.
11. There shall be 230 paved parking spaces.
12. The golf course and swimming pool may operate from daylight until dark.
13. The club house dining room, bar and other amenities are not restricted.
14. The proposed replacement shed shall be 30'x80' and shall be located 30 ft. away from the original shed for drainage and shall be used to store equipment.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 0 with 1 abstention (Mr. Yaremchuk)(Mr. DiGiulian being absent).

Page 445, April 6, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for June 17, 1980 and June 20, 1980. Mrs. Day moved that the Minutes be approved as written. Mr. Hyland seconded the motion and it passed unanimously.

//

Page 445, April 6, 1982, After Agenda Items

Elise Leigh, V-6-78: The Board was in receipt of a request from Mrs. Elsie Leigh for an extension of the variance V-6-78 which was granted on April 4, 1978 to allow a subdivision into four lots having 8 ft. width. Mr. Hyland moved that the Board allow a six month extension. Mr. Yaremchuk seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

// There being no further business, the Board adjourned at 2:00 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on Dec. 20, 1983

Daniel Smith, Chairman

Approved: January 10, 1984
Date

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 13, 1982. The following Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; Ann Day, and John Yaremchuk. Gerald Hyland was absent.

446

The Chairman opened the scheduled meeting at 10:20 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. ROCKY GORGE COMMUNITIES, INC., appl. under Sect. 3-803 of the Ord. for community tennis courts, located 6090 Crown Royal Ci., R-8, Lee Dist., 81-4((29))B, 42,656 sq. ft., S-82-L-016.

Mr. Donald Speeds, Rt. 1 Box 441, Stafford, Virginia, presented the application. He stated that the proposed tennis courts would be owned and maintained by the Runnymeade Homeowners Association. The courts will be in use during daylight hours, and are within walking distance, although eight parking spaces have been provided. In response to a question from Chairman Smith, Mr. Speeds replied that 85 units would use the courts. He stated there were additional tot lots and courts proffered for the second section.

The Board had no further questions, and there was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

WHEREAS, Application No. S-82-L-016 by ROCKY GORGE COMMUNITIES, INC., under Section 3-803 of the Fairfax County Zoning Ordinance for community tennis courts, located at 6090 Crown Royal Circle, tax map reference 81-4((29))B, County of Fairfax, Virginia has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-8.
3. The area of the lot is 42,656 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The hours of operation shall be daylight hours.
8. The number of parking spaces shall be eight.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. Hyland being absent)

447

Page 447, April 13, 1982, Scheduled case of

10:20 A.M. ECKHARD & MARGARETE LIPTAU/JAYBEE BUILDERS, INC., appl. under Sect. 18-406 of the Ord. to allow deck to remain 16.6 ft. from rear lot line (19 ft. min. rear yard req. by Sect. 3-507 & 2-412), located 7953 Parsons Grove, R-5, Providence Dist., 39-4((24))(2)7, 6,926 sq. ft., V-82-P-023.

Mr. Paul Holtz of Jaybee Builders, Inc., 4034 Roberts Road, Fairfax City, presented the application. He stated that the property was owned by the Liptaus and Jaybee Builders, in error, constructed a deck extending into the required rear yard. He stated that the deck was not shown on the original approved building plan. A smaller sized deck was shown on the plat, and the sales people had not understood that the deck could not be extended. In order to sell the house, they agreed to customize it, including the larger deck on the back. It was not until the final house location survey was done that the builders found out they were in violation of the Zoning Ordinance. Mr. Holtz stated that the way the subdivision was set up there was heavily wooded areas and common ground owned by the Homeowners Association.

There was no one to speak in support and no one to speak in opposition.

Page 447, April 13, 1982 Board of Zoning Appeals
ECKHARD & MARGARETE LIPTAU/JAYBEE BUILDERS, INC.

R E S O L U T I O N

In Application No. V-82-P-023 by ECKHARD & MARGARETE LIPTAU/JAYBEE BUILDERS, INC. under Section 18-406 of the Zoning Ordinance to allow deck to remain 16.6 ft. from rear lot line (19 ft. min. rear yard req. by Sect. 3-507 & 2-412), on property located at 7953 Parsons Grove, tax map reference 39-4((24))(2)7, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution;

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

The property is certainly shallow in depth and has an unusual condition in the location of the existing buildings. Under the Zoning Ordinance this is a substandard lot. As it has been stated, it is difficult to locate a reasonably sized home on this lot.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this variance 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 variance will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED, that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent)

Page 447, April 13, 1982, Scheduled case of

10:30 A.M. JOANNE C. LINDENBERGER & BENJAMIN M. SCHUTZ/JAYBEE BUILDERS, INC., appl. under Sect. 18-406 of the Ord. to allow deck to remain 17.2 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-507 & 2-412), located 7952 Parsons Grove, R-5, Providence Dist., 39-4((24))(2)4, 6,926 sq. ft., V-82-P-024.

Mr. Paul Holtz of Jaybee Builders, Inc., 4034 Roberts Road, Fairfax City, presented the application. He stated that this was an error on the part of the sales personnel. He stated that this house has been occupied by the new owners since the fall of 1981. The violation was discovered when he was informed of the Liptaus' violation.

Page 448, April 13, 1982
JOANNE C. LINDENBERGER & BENJAMIN M. SCHUTZ/JAYBEE BUILDERS
(continued)

There was no one else to speak in support of the application and no one to speak in opposition.

Page 448, April 13, 1982 Board of Zoning Appeals
JOANNE C. LINDENBERGER & BENJAMIN M. SCHUTZ
/JAYBEE BUILDERS, INC.

RESOLUTION

In Application No. V-82-P-024 by JOANNE C. LINDENBERGER & BENJAMIN M. SCHUTZ/JAYBEE BUILDERS, INC., under Section 18-406 of the Zoning Ordinance to allow deck to remain 17.2 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-507 & 2-412), on property located at 7952 Parsons Grove, tax map reference 39-4((24))(2)4, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this variance 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. The land behind the property will be dedicated to public use with no residences on the rear property.

2. That the granting of this variance 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, who is the resident. Said error was discovered after settlement and after occupancy permits were obtained.

NOW, THEREFORE, BE IT RESOLVED, that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent)

Page 448, April 13, 1982, Scheduled case of

10:40 A.M. JAYBEE BUILDERS, INC. appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling to 17.6 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-507 & 2-412), located 7954 Parsons Grove, R-5, Providence Dist., 39-4((24))(2)3, 8,178 sq. ft., V-82-P-025.

Mr. Paul Holtz of Jaybee Builders, Inc., 4034 Roberts Road, Fairfax City, presented the application. He stated that this house was under construction and the buyer has requested a larger deck, which had been agreed to by the sales people. He stated there was common ground behind the house and the rear yard is increased by approximately 100 feet because of this.

There was no one else to speak in support of the application and no one to speak in opposition.

Page 448, April 13, 1982 Board of Zoning Appeals
JAYBEE BUILDERS, INC.

RESOLUTION

In Application No. V-82-P-025 by JAYBEE BUILDERS, INC. under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 17.6 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-507 & 2-412), on property located at 7954 Parsons Grove, tax map reference 39-4((24))(2)3, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

RESOLUTION

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 - 0. (Mr. Hyland being absent)

Page 449, April 13, 1982, Scheduled case of

10:50 A.M. EDWARD M. JOHNSON & HOWARD W. SHARPE, appl. under Sect. 18-401 of the Ord. to allow subdivision into 2 lots, one having width of 12 ft. and the other having width of 172.77 ft., (200 ft. min. lot width req. by Sect. 3-E06), located 600 Utterback Store Rd., R-E, Dranesville Dist., 7-1((1))23, 5.0 acres, V-82-D-026.

Mr. Ed Johnson, 1341 Kirby Road, McLean, Virginia, presented the application. He stated that due to the irregular shape of the lot, it was hard to subdivide the lot into two pieces. He stated that the 185 feet he now had, he didn't feel was a big problem. The applicants had owned the property for two months and were aware of the condition when they purchased the property.

The next speaker, Susan Notkins, an architect practicing at 1179 Crest Lane, McLean, spoke in opposition. She stated that she represented the owners of the property to the immediate north of the subject property, Russell R. Seabau and Jane P. Woodward. She stated that the Seabau's were concerned because of the topography of the property, and the road along their property which gives them egress onto Utterback Store Road. That road is with five feet of the common property line and has a substantial cut which has been very difficult to maintain. With a road along this pipestem, Mr. Seabau is concerned that the individuals doing the excavation for the road would not be able to maintain the grade on his property. Mr. Seabau feels that there are substantial technical problems which would make it difficult and unwise to put the road along this property line.

The next speaker in opposition was Jeffrey S. Baine. He submitted two letters of opposition to the Board Members. He stated that he owned lot 22A, immediately to the north of the subject property. He stated that he had owned the property for about eight years and was building a home there for himself. Mr. Baine stated he was opposed to the subdivision for several reasons. The property is substandard with a frontage of only 184.77 ft. The frontage standard is a minimal one, and should not be lowered except for the most compelling reasons. It appears that the profit motive is the main reason for requesting the subdivision. He stated that the owners purchased the property three months ago knowing full well it was substandard, and that they wanted to cash in on their investment. He stated that the lots' unique topography made it unsuitable for building two houses. Mr. Baine stated that the proposed subdivision would place one house site directly outside his living room and bedroom windows, and this would invade his privacy and destroy the natural beauty of the heavily wooded area. All of the surrounding property owners have expressed their disapproval of this variance. In response to a question from Mr. Yaremchuk, Mr. Baine stated that the proposed house would be within 150 to 200 feet from his bedroom window. Mr. Baine read a letter of opposition from James Erickson, 604 Utterback Store Road, adjacent to the south of the subject property.

The next speaker in opposition was David Tuttle, 10823 Fawn Drive, Great Falls. His property is just to the east across Utterback Store Road from the subject property. He stated that he was also speaking for his immediate neighbors to the north, Mr. & Mrs. Sciambi, 10824 Fawn Drive. He stated that the 200 foot frontage was established with the intent to maintain a relatively sparse development.

The next speaker in opposition was John Hughes Caley, 11006 Forest Oak Lane, lot 3, Running Brook Estates. He stated that he had very little to add, other than that as a property owner the low density character of this area ought to be respected and the quality of the wooded environment ought to be preserved. He stated that he would suffer a loss of privacy on the north side of his house.

450

The next speaker in opposition was Jim Smith, 11010 Forest Oak Lane, lot 4, Running Brook Estates. He stated his property adjoined the subject property. In his development, subdivision is restricted to keep the continuity of the community. He stated that by allowing this property to be subdivided, it would create a more dense population situation. Mr. Smith presented a letter of opposition to the Board from his neighbors, Robert and Susan Newhall, who also abut the subject property.

During rebuttal, Ed Johnson stated that he was not a developer and it was not his intention to make a profit when he bought his property. He stated that if he got the subdivision, he was building a home for himself on the back of the lot. He stated that he had built other homes in the area for himself, and he always tried to take his neighbors privacy into consideration. He stated he would save as many trees as possible, and the only ones that were going to come down would be for the septic field, the driveway and the house itself. He stated that he would try to make the driveway usable and would not distrupt any other neighbors' property.

There was no one else to speak in support or opposition.

R E S O L U T I O N

In Application No. V-82-D-026 by EDWARD M. JOHNSON & HOWARD W. SHARPE under Section 18-401 of the Zoning Ordinance to allow subdivision into 2 lots, one having width of 12 ft. and the other having width of 172.77 ft. (200 ft. min. lot width req. by Sect. 3-E06), on property located at 600 Utterback Store Road, tax map reference 7-1((1))23, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

AND, WHEREAS, the Board of Zoning Appeals has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-E.
3. The area of the lot is 5.0 acres.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED

Mrs. Day seconded the motion.

The motion passed by a vote of 3 - 1. (Mr. DiGiulian) (Mr. Hyland being absent)

Page 450, April 13, 1982, Scheduled case of

11:00 A.M. NORMAN L. & JOAN MCCULLOUGH, appl. under Sect. 18-401 of the Ord. to allow extension and enclosure of carport to a 2-car garage addition to dwelling 23.0 ft. from front lot line (25 ft. min. front yard req. by Sect. 3-207), located 9520 St. Charles Pl., R-2(C), Annandale Dist., 69-1((4))36, 12,345 sq. ft., V-82-A-027.

Mr. Norman McCullough, 9520 St. Charles Place, Fairfax, Virginia, presented his application. He stated that he wanted a garage to maintain the cars during the winter and alleviate some of the problems of moving one car to get to another. He stated that he had owned the property for one year, and that when he purchased the lot he was not aware of the restrictions on a corner lot at that time. Mr. McCullough stated that the garage would be wood shingle to match the existing house. Mr. Yaremchuk stated that the lot was triangular in shape and forced the builder to place the house on the front portion of the house. He stated that the hardship was the unusual condition of the building location.

There was no one to speak in support and no one to speak in opposition.

451

RESOLUTION

In Application No. V-82-A-027 by NORMAN L. & JOAN MCCULLOUGH under Section 18-401 of the Zoning Ordinance to allow extension and enclosure of carport to a 2-car garage addition to dwelling 23.0 ft. from front lot line (25 ft. min. front yard req. by Sect. 3-207), on property located at 9520 St. Charles Place, tax map reference 69-1((4))36, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2(C).
3. The area of the lot is 12,345 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, coming to a triangular point at the front of the lot. The configuration of the lot necessitates the house being pushed to one corner. It is in a cluster subdivision.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent)

Page 451, April 13, 1982, Scheduled case of

11:10 A.M. JOHN R. & PATRICIA S. JULIANO, appl. under Sect. 18-401 of the Ord. to allow construction of dwelling 10 ft. from each side lot line (12 ft. min. side yard req. by Sect. 3-307), located 6914 Chelsea Rd., R-3, Dranesville Dist., 30-2((4))(5)15 & 16, 10,357 sq. ft., V-82-D-028.

The first speaker was James George Boreland, an attorney in McLean, 1308 Vincent Place, who represented Mr. and Mrs. Juliano. He stated that the Julianos' bought property, lot 17 & 18, Beverly Manor Subdivision on June 17, 1981 where they built a house. At that time there was a ten foot side lot line restriction. Subsequently, they bought lots 15 & 16, the subject property being discussed today. They assumed the building restriction was also 10 feet, but were advised by the County it had been changed to a 12 ft. building restriction on each side. Mr. Boreland stated that all the other homes in Beverly Manor had 10 ft. side lots. In response to a question from Mr. Yaremchuk, Mr. Boreland stated that the property had been bought when the old Ordinance was in effect. Mr. Covington stated that the Ordinance had been changed in 1978.

The next speaker was Clarence Reid, a builder who constructed most of Beverly Manor Subdivision. He stated that of the two hundred houses he had built in that area in thirty one years, Mr. Woodson, the Zoning Administrator had waived all the houses to ten feet. Mr. Reid stated that the building permit had been obtained for lot 17 & 18, on June 17, 1981. He sold lot 15 & 16 to the Julianos' on September 1981. Mr. Reid stated that the map was very hard to read, and that is probably why he was able to get a building permit for the first house. He stated that this had been happening for years because of the difficulty in reading the map.

Chairman Smith stated that he wanted to know why a building permit was granted for lots 17 & 18 for an identical size house with a ten foot side yard, and yet was turned down for the other two lots. He stated that the Ordinance was changed in 1978, and the 1981 building permit for lots 17 & 18, should not have been issued.

//The Board recessed at 11:50 A.M. to research the question of the building permit that had been issued in error.

//The meeting re-convened at 12:05 P.M.

Chairman Smith stated that building permits had been obtained by Mr. Reid for the property in 1979 before he sold it. Mr. Reid stated that he had gotten variances for most of the lots at the time he obtained the building permits. He stated that he had planned to build smaller houses on some of the lots. Mr. Yaremchuk stated that most of the subdivision was 10 feet from the property line, and that the request was not out of line.

The next speaker was Lawrence Burnett, the owner of lots 19 & 20, adjacent to the Julianos' lot. He stated that he was informed there was a 12 foot setback on the Julianos' property about 18 months ago. He stated that it was hard to find a house plan to fit that setback.

There was no one else to speak in support and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-82-D-028 by JOHN R. & PATRICIA S. JULIANO under Section 18-401 of the Zoning Ordinance to allow construction of dwelling 10 ft. from each side lot line (12 ft. min. side yard req. by Sect. 3-307), on property located at 6914 Chelsea Road, tax map reference 30-2((4))(5)15 & 16, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,357 sq. ft.
4. That the applicant's property is exceptionally irregular in shape, including long and narrow. The lot is substandard in width for the zoning category.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. Hyland being absent)

453

Page 453, April 13, 1982, Scheduled case of

11:30 A.M. PANACHE BUILDERS, INC., appl. under Sect. 3-503 of the Ord. for community swimming pool, bath house, and related facilities, R-5, Mason Dist., 59-4((1))pt. 9A, 31,875 sq. ft., S-82-M-012. (DEFERRED FOR DECISION FROM MARCH 23, 1982 AT REQUEST OF ZONING ADMINISTRATOR).

The representative for Panache Builders stated that this case had not been heard by the Planning Commission yet because of the lack of communication between the Department of Environmental Management and the Planning Commission office. He requested that the matter be deferred for another three weeks if it was acceptable to the BZA.

The Special Permit application for Panache Builders, Inc. was deferred to May 4, 1982 at 11:20 A.M.

Page 453, April 13, 1982, After Agenda Items

The Board approved the minutes for June 24, 1980, as presented.

// There being no further business, the Board adjourned at 12:21 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith
DANIEL SMITH, CHAIRMAN

Submitted to the Board on Dec. 20, 1983

APPROVED: Jan. 10, 1984
Date

454

Blank

455

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 20, 1982. The following Board Members were present: Daniel Smith, Chairman; John Yaremchuk; Gerald Hyland and Ann Day. (Mr. John DiGiulian was absent).

The Chairman opened the meeting at 10:15 A.M. and Mrs. Day led the prayer.

The Chairman called the recessed hearing of

RECESSED HEARING OF DECKER ANSTROM & SHERRON HIEMSTRA, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling to 4.2 ft. from rear lot line (19 ft. min. rear yard req. by Sects. 3-207 & 2-412), located 3416 Sharon Chapel Rd., R-2, Lee Dist., 82-4((16))4, 15,731 sq. ft., V-82-L-021. (RECESSED FROM APRIL 6, 1982 FOR DECISION OF FULL BOARD).

Chairman Smith announced that Mr. DiGiulian was absent due to the flu and asked the Board for guidance on the application. Mr. Hyland stated that he believed the Board was prepared to make a resolution on the application. Mr. Yaremchuk asked to see the plat of the application.

R E S O L U T I O N

In Application No. V-82-L-021 by DECKER ANSTROM & SHERRON HIEMSTRA under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 4.2 ft. from rear lot line (19 ft. minimum rear yard req. by Sects. 3-207 & 4-12) on property located at 3416 Sharon Chapel Road, tax map reference 82-4((16))4, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982 and deferred for decision until April 20, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant
2. The present zoning is R-2.
3. The area of the lot is 15,731 sq. ft.
4. That the applicant's property is exceptionally irregular in shape being long but shallow from Sharon Chapel Road and has an unusual condition in the location of the existing buildings as they are situated all the way to the rear lot line on the subject property. Since the adjoining property is a cemetery, there would not be any further development of the property and no one would be impacted by the construction of the deck.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application, and is not transferable to other land or other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 456, April 20, 1982, Scheduled case of

10:00 A.M. PAUL F. SOMERVILLE, appl. under Sect. 18-401 of the Ord. to allow enclosure of carport into a garage 8.2 ft. from side lot line such that total side yards would be 15.2 ft. (8 ft. min. but 20 ft. total min. side yard req. by Sects. 6-108, 16-102 & 3-307), located 8313 Cushing Ct., PDH-3, Springfield Dist., 98-4((6))171, 9,200 sq. ft., V-82-S-029.

456

Mr. Paul F. Somerville of 8313 Cushing Court in Springfield informed the Board that he wanted to enclose an existing carport into a garage to provide a better facility for his auto and his garden equipment. He stated that a majority of his neighbors had already done the same thing. In response to questions from the Board, Mr. Somerville stated that the enclosure of the carport would result in the garage being the same distance as he did not proposed to expand it. Mr. Hyland inquired as to the number of other homes in the area who had enclosed their carports and was informed there were 84 homes in the subdivision. About 80% of them had enclosed their carports. Some had garages built at the time the house was new. Other had enclosed the carport during the past two years. Mr. Somerville stated that he had returned to the Virginia area two years ago and the zoning regulations had changed during his absence. Before that, he would not have needed a variance to enclose the carport. Mr. Somerville explained to the Board that he did not have any other place to construct the garage. Mr. Hyland inquired if it was possible to build a garage at the back of the house. Mr. Somerville replied that he had a screened porch at the back which would prevent construction of a garage. There were trees in the back which he preferred not to have to remove. Mr. Hyland had Mr. Somerville locate the screened porch on the plat as it was not shown on the plat.

There were no further questions from the Board. There was no one else to speak in support of the application and no one to speak in opposition.

R E S O L U T I O N

In Application No. V-82-S-029 by PAUL F. SOMERVILLE under Section 18-401 of the Zoning Ordinance to allow enclosure of carport into a garage 8.2 ft. from side lot line such that total side yards would be 15.2 ft. (8 ft. minimum but 20 ft. total minimum side yard required by Sects. 6-108, 16-102 & 3-307) on property located at 8313 Cushing Court, tax map reference 98-4((6))171, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is PDH-3.
3. The area of the lot is 9,200 sq. ft.
4. That the applicant is proposing to enclose an existing carport with dimensions of 21.97'x22' and the proposed enclosure will result in a garage with the same dimensions. Second, that the Board received testimony that there was no other practical location for the construction of a garage. Third, the applicant has indicated that there are 84 homes in the subdivision of which approximately 80% have either garages or carports which have been enclosed, many of which were enclosed prior to the change in the Ordinance. Fourth, the Board was not received any objection from any contiguous property owner.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

457

457

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 457, April 20, 1982, Scheduled case of

10:10 A.M. DONALD W. & RUTH ARLINE RICHMAN, appl. under Sect. 18-401 of the Ord. to allow subdivision into 2 lots, one having proposed width of 18 ft. (80 ft. min. lot width req. by Sect. 3-306), located 6001 Rolling Rd., R-3, Lee Dist., 81-4((1))81, 29,040 sq. ft., V-82-L-030.

As the required notices were not in order, the Board deferred the variance until May 11, 1982 at 11:15 A.M.

//

Page 457, April 20, 1982, Scheduled case of

10:20 A.M. CIRCLE WOODS HOMEOWNERS ASSOCIATION, appl. under Sect. 3-803 of the Ord. for community swimming pool, bath house & related facilities, R-8, Providence Dist., 48-3((36))F, 11,023 sq. ft., S-82-P-017.

Mr. Russell Rosenberg, an attorney with an office located at Fairfax Circle, represented the applicants. He informed the Board that this was an application for approval of a pool and bathhouse to serve Circle Woods which was located outside of the City of Fairfax. The pool would serve 298 families in the community. There were only six parking spaces proposed for the pool. Mr. Rosenberg stated that Circle Woods was a townhouse community and all the homes were within easy walking distance. Walkways had been provided. The hours of operation would be 11 A.M. to 9 P.M. and there would be two employees. Mr. Hyland inquired if the parking would be restricted to the employees. Mr. Rosenberg stated that at least two parking spaces would be available for employees and the remainder would be used for the pool members to pick up children. Mr. Hyland inquired if one parking space could be set up for handicapped parking. Mr. Rosenberg stated that he did not see why that could not be accommodated. Mr. Hyland stated that it seemed to him that since the parking was not necessary that would be a fine accommodation. Mr. Rosenberg stated that they would have to oversize the parking space but it could be accommodated.

Mrs. Day inquired if the facility would abutt any residential property. Mr. Rosenberg replied that it was adjacent to residential property within the community but not any residential outside the community. Mrs. Day inquired if there would be lights. Mr. Rosenberg stated that there would not be any lights other than security lights and the bathhouse lights. There would not be any lights on tall poles. Mrs. Day asked if any of the lights would shine into someone's home. Mr. Rosenberg stated that the lights would not shine in as there would not be any directional lighting.

There was no one else to speak in support of the application. Mr. Robert E. All of 3005 Maple Drive in the Fairlee Subdivision spoke in opposition. He stated that the pool was part of a larger subdivision which was next to his subdivision and he was trying to avoid as much noise as possible. He stated that in some facilities, there were loudspeaker units. He asked to be assured that he would not be disturbed. Chairman Smith inquired as to how close Mr. All was from the facility and was informed it was across the street about 100 yards. Chairman Smith inquired if Mr. All was part of the development and was informed he was not. He lived in Fairlee Subdivision which was contiguous to Circle Woods. Mr. All stated that Maple Drive made a turn and he lived on the corner. Chairman Smith inquired if Mr. All had any other concerns. Mr. All replied that he just wanted to be on the defense against noise. Chairman Smith stated that there was a Noise Ordinance in the County to cover any noise factor. He stated that if Mr. All felt that the noise was greater than allowed or if it became a nuisance, he could report it to the Zoning Enforcement Division to monitor the noise. If it was greater, the applicant would be requested to adjust it to conform to the Ordinance. Chairman Smith stated that the only noise difficult to regulate was the laughter and play of children. Mr. All stated that was satisfactory to him.

There was no one else to speak in opposition. During rebuttal, Mr. Rosenberg stated that the Board had already mentioned the Noise Ordinance to control noise. He stated that there would be some kind of a loudspeaker on the bathhouse. In terms of the location of the homes, the pool would be on the west side of Circle Woods Drive. Between Mr. All's lot and the pool, there was a street and the remaining area which would be developed into townhouses and then a street and then the pool. Mr. Rosenberg stated that there was a substantial buffer in the area. Mr. Rosenberg stated that the townhouse development should absorb any noise. If there were any concerns, he stated that if they were brought to the attention of the homeowners association or the County that it would be corrected at that time. Chairman Smith stated that the noise factor should be contained on the site. Mr. Rosenberg stated that the residents in Circle Woods would not want to hear the telephone calls and noise either. Mrs. Day inquired as to why the facility could not be limited to just Saturday and Sunday. Chairman Smith inquired if the pool intended to request after hours parties. Mr. Rosenberg replied

458

that he could not speak to that but he asked that the right be reserved. Chairman Smith explained that it was a policy to allow a limit of six after hours parties per year provided that there was not any noise factor.

Chairman Smith had another question about the operating hours. He stated that the applicant was seeking 11 A.M. to 9 P.M. and the normal time was 9 A.M. to 9 P.M. He stated that if it was intended to have pool instructions that 11 A.M. was a little unusual opening time.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-P-017 by CIRCLE WOODS HOMEOWNERS ASSOCIATION under Section 3-803 of the Fairfax County Zoning Ordinance to permit community swimming pool, bathhouse & related facilities, located at Circle Woods Drive, tax map reference 48-3((36))F, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 20, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-8.
3. That the area of the lot is 11,023 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of memberships shall serve 298 families who are in walking distance of the pool.
8. The hours of operation shall be 11 A.M. to 9 P.M., seven days a week, from Memorial Day through Labor Day.
9. The number of parking spaces shall be six of which two shall be for employees, one for handicapped and three for all others.
10. There shall be two employees.
11. It is required that the employees close up and clean the pool quickly and quietly at 9 P.M. with no loud conversations, music or other noises. Loudspeakers shall be turned off at 9 P.M. and lights not required for the cleanup shall be turned off promptly at 9 P.M.
12. Unless otherwise qualified herein, extended hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:

459

(A) Limited to six (6) per season.
(B) Limited to Friday, Saturday, and pre-holiday evenings.
(C) Shall not extend beyond 12:00 midnight.
(D) Shall request at least 10 days in advance and receive prior written permission from the Zoning Administrator for each individual party.
(E) Requests shall be approved for only one (1) such party at a time, and such requests will be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.
(F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
(G) Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 0 (Mr. DiGiulian being absent).

Page 459, April 20, 1982, Scheduled case of

10:30 A.M. JAMES W. THORNBURG, appl. under Sect. 4-603 of the Ord. for commercial Duplicate Bridge Establishment within condominium office building, located 4532 B John Marr Dr., C-6, Mason Dist., 71-1((31))1-16, 1.17 acres, S-82-M-018.

Mr. James W. Thornburg of Beauregard Street in Alexandria informed the Board that he had opened up a club with people who had no club as such. He wanted to run a bridge club seven days a week from 6 P.M. until 10:30 or 11 P.M. and on Saturday and Sunday starting at 1 o' clock. Mr. Thornburg stated that he would organize and conduct the meetings. The group was associated with another bridge group in Memphis, Tennessee. He stated that they got rating points towards their Life Master so they could play all over the United States in duplicate bridge tournaments. Mr. Thornburg stated that this was not a corporation and that he was operating the club as an individual. The lease involved 1500 sq. ft. of space on the second floor of the building. The Fire Marshal had checked out the facility and the club was allowed 60 people.

In response to questions from the Board, Mr. Thornburg stated that he had a six month lease with an option to buy the space. Chairman Smith informed the staff that it should have gotten the square footage involved included in the staff report since this was a multi-purpose building. Mr. Covington responded that was taken care of at the time of the occupancy permit. Chairman Smith stated that it still needed to be included in the staff report. Chairman Smith examined the lease and stated that it was only a letter from Mr. and Mrs. Barr and it did not state the square footage involved or the length of the lease. Mr. Hyland inquired as to how much money Mr. Thornburg would be charged for the use of the facility. Mr. Thornburg stated that he would pay 50% of his gross receipts. Chairman Smith stated that the Board needed the written agreement setting forth the space involved and the arrangement of the lease agreement.

Mr. Hyland inquired if it was possible for Mr. Thornburg to bring that information back to the Board today. Mr. Yaremchuk stated that the Board would not be meeting much longer as there was only one more item. Mrs. Day suggested that the Board defer the matter for one week.

Mrs. Lorraine Coals of Annandale addressed the Board regarding the issues of the club. She was in support of the application in order to allow recreation. She stated that she had been involved in bridge for a long time and was often confined to playing in basements and knotty holes. Mr. Thornburg had offerred them an opportunity to play in an air-conditioned room. This would serve a tremendous need to get the master points. Mrs. Coals stated that this was not bingo. However, they did pay the Director for his services in supplying the room. The members got points out of this club. Mrs. Coals stated that the club would not be a hinderance on anyone. She explained that she would not be able to attend the next meeting so she was anxious to speak.

Chairman Smith stated that the Board needed to address the parking and that it should be addressed in the lease. The parking arrangement should be in the lease. Mr. Thornburg stated that he had four assigned spaces during the day and over 80 at night that would not be used.

There was no one else to speak in support and no one to speak in opposition. Chairman Smith questioned the location of the space inside the building and what it was designated as. Mr. Thornburg stated that it was designated as 4532-B on the second floor. Chairman Smith outlined the information necessary for the Board's consideration. He stated that the location needed to be outlined and the exact square footage of the space, maximum number of people at any one time to be limited to 60 and the parking arrangement for the use needed to be provided to the BZA. Mr. Covington stated that the applicant's statement covered the parking. Chairman Smith stated there was nothing mentioned about the parking.

Mr. Hyland asked that the applicant provide the lease or whatever written agreement he had to the Board so they could see it. Mr. Thornburg inquired as to how he was to get it to the Board. Chairman Smith stated that the applicant was to provide the information within the next day or so and he was to take it where he made the application.

It was the consensus of the Board to defer the application until April 27, 1982 at 8:45 P.M. for the requested information.

//

Page 460, April 20, 1982, Scheduled case of

10:45 A.M. & ANDROWOS Y. KULEY, appl. under Sect. 18-401of the Ord. for a miniature golf course in conjunction with an eating establishment on a plot containing 26,737 sq. ft. and having width of 60 ft. (40,000 sq. ft. min. lot area and 200 ft. min. lot width req. by Sect. 4-606), located 7317 Little River Turnpike, C-6, Mason Dist., 71-1 ((23))A, 26,737 sq. ft., V-82-M-037.

10:45 A.M. ANDROWOS Y. KULEY, appl. under Sect. 4-603 of the Ord. for a miniature golf course in conjunction with an eating establishment, located 7317 Little River Turnpike, C-6, Mason Dist., 71-1((23))A, 26,737 sq. ft., S-82-M-020.

The Clerk informed the Board that the required notices were not in order. Mr. E. K. Uhler, real estate broker, was present at the meeting. Mr. James A. Brinkley of 7131 Little River Turnpike was in opposition to the application. It was the consensus of the Board to defer the applications until May 18, 1982 at 8:45 P.M. for notices.

//

Page 460, April 20, 1982, Scheduled case of

11:00 A.M. CHARLES S. & JOAN S. EVANS, appl. under Sect. 18-401 of the Ord. to allow subdivision into 2 lots, one of which would have width of 50 ft. (200 ft. min. lot width req. by Sect. 3-E06), located 614 Walker Rd., R-E, Dranesville Dist., 7-4((1))29, 4.677 acres, V-82-D-032.

The Board was in receipt of a letter from the applicants seeking a withdrawal of the application. It was the consensus of the Board to allow the withdrawal without prejudice.

//

Page 460, April 20, 1982, Scheduled case of

11:10 A.M. RICHARD & MARIANNE BROWN, appl. under Sect. 18-401 of the Ord. to allow resubdivision of 2 lots into 4 lots with proposed lots 52A & 52C having width of 15 ft. and proposed lot 52 having width of 30 ft. (100 ft. min. lot width req. by Sect. 3-206), located 7019 & 7012 Woodland Dr., R-2, Annandale Dist., 80-1((4))52 & 52A, 2.14 acres, V-82-A-033.

Mrs. Brown of 7117 Woodland Drive informed the Board that this request was within the zoning and that a plat had been submitted. No variance was required. Mrs. Brown stated that the zoning staff had goofed and the plat was stopped for technical reasons. When the plat was submitted, it had been given the okay and notices were sent to the people on the street. Mr. Mitchell had called and informed them they needed a variance.

Chairman Smith inquired as to how long the applicants had owned the property. Mrs. Brown stated that her husband had bought the property four years ago. He had purchased the other property in August of last year and done a lot of renovating. Chairman Smith questioned the two existing houses on the property and the applicants' desire to build two additional houses. Mrs. Brown stated that they wanted the option. The square box lines showed the future construction. They had been told that they needed something on the plat. Chairman Smith inquired as to what they planned to do with the land and was told they did not plan to do anything at the present time. Mrs. Brown stated that they might sell the land. Mr. Hyland stated that he did not recall ever having ruled on a variance that might never be constructed. Mrs. Brown stated that the future houses would be 25 ft. from the pipestem. There would be 42 ft. to the front and 29 ft. to the back. Mr. Covington stated that he thought that was a street and indicated that the applicant would have been better not to have shown the house on the plat. Chairman Smith stated that he would rather have them show that they could meet the setback. Mr. Hyland noted that lot 52-B should show a 25 ft. setback from the pipestem. He stated that the applicant had changed the dimensions of the building to 45 ft. to end up with the 25 ft.

Chairman Smith again questioned who owned the property. Mrs. Brown stated that she and her husband owned all of it. Mr. Hyland inquired if Dick Brown, Inc. owned any part of the land. Chairman Smith stated that it appeared Richard and Marianne Brown owned the property to the left and Dick Brown, Inc. owned the property to the right.

461

461

Chairman Smith stated that there were two lots and two separate entities who wanted to subdivide into four lots. Mr. Yaremchuk stated that this was just opposite from what it should be. Mrs. Day agreed with Mr. Yaremchuk. Chairman Smith stated that the application should be readvertised. Mrs. Brown inquired if someone could go through the application. Mr. Yaremchuk stated that he could not make heads nor tails of the application. Chairman Smith inquired as to who was Dick Brown, Inc. and was informed he was a painting contractor. Mrs. Brown inquired as to all the things the Board required. Chairman Smith advised that the plats needed to be readable and the application needed to be upgraded. Mr. Covington stated that the applicants needed a variance on the existing dwelling.

Mr. Hyland outlined the necessary information to be provided by Mrs. Brown as she was confused. He stated that the application had to be amended and the staff had to readvertise to show an additional variance that was not previously advertised. Mr. Hyland questioned the future building on the plat in accordance with the comments from Design Review.

It was the consensus of the Board to defer the application until May 11, 1982 at 11:30 A.M. for the additional information.

//

Page 461, April 20, 1982, After Agenda Items

Jack Chocola: The Board was in receipt of a letter from Jack Chocola for a one year extension of the variance granted by the BZA. It was the consensus of the Board only to allow a six month extension.

//

Page 461, April 20, 1982, After Agenda Items

BZA Membership: The Board of Zoning Appeals was in receipt of an Order from Judge Jennings increasing the membership of the BZA from five to seven members with the terms of the two additional members being one for two years and one for three years.

Chairman Smith stated that he assumed the two appointees would be forthcoming and that the Board could expect the new members in the near future. He stated that the Board would have to amend its bylaws and upgrade them to accommodate several changes that had taken place as far as the Ordinance. Mr. Hyland stated that the Zoning Ordinance indicated only five BZA members so it would have to be amended also.

Chairman Smith suggested that the Board have a session with the new members to welcome them and to have an opportunity to discuss policies and to give them a better understanding of the position. Mr. Yaremchuk stated that he felt it was too early to start talking about policy. He stated that it was probably a good idea to talk with them a little informally.

Chairman Smith asked the Clerk to research and accummulate all of the BZS policies and statements that the Board presently had and to make the BZA aware of them. Chairman Smith stated that the Board could discuss them and either reject or adopt them as policies. Chairman Smith stated that the Board needed to update the policies and provide a package to everyone.

Mr. Yaremchuk stated that for years Chairman Smith would make a statement as policy and he would challenge him. However, after a couple of years, Mr. Yaremchuk stated that he found out that the Chairman was pretty fair and had done a good job. Chairman Smith thanked Mr. Yaremchuk for his statement. Chairman Smith stated that in some of his statements regarding a turnaround area for special permit applications, he was trying to prevent injuries from people backing out driveways. Mr. Hyland stated that he appreciated the Chairman's position but indicated the problem could be covered by having people back in the driveway. Mr. Hyland stated that the problem he had was that the situation was not much different whether the property was under a special permit or not. Chairman Smith stated that the Board might want to make the policies in order to give guidelines to the applicants and to the Zoning Administrator in the implementation of the Ordinance. Mr. Covington stated that the staff could not refuse a application. Mr. Hyland stated that it would be helpful if the Board members had the policies. In addition, he stated that it would be helpful that when the new members joined the Board, that everyone sat down and kicked the policies around for better or worse.

// There being no further business, the Board adjourned at 12:30 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the Board on Dec. 20, 1983

Daniel Smith
DANIEL SMITH, CHAIRMAN

APPROVED: January 10, 1984
Date

462

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Evening, April 27, 1982. The following Board Members were present: Daniel Smith, Chairman; Ann Day, John Yaremchuk and Gerald Hyland. John DiGiulian was absent.

The Chairman opened the scheduled meeting at 8:10 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. ARTHUR L. & GLENA D. COFFING, appl. under Sect. 18-401 of the Ord. to allow subdivision into 5 lots and 2 outlots with proposed lots 1, 2, 3, 4 & 5 having width of 3.60 ft. (80 ft. min. lot width req. by Sect. 3-306), located Kendale Rd., R-3, Mason Dist., 60-3((24))8 & 60-3((31))A, 2.407 acres, V-81-M-217. (DEFERRED FROM 2/23/82 FOR FULL BOARD AND TO REVIEW ADDITIONAL INFORMATION RECEIVED.)

Chairman Smith stated that the Board was in receipt of a letter from Paciulli, Simmons and Associates requesting that they withdraw the application without prejudice. The Board was also in receipt of a letter from the opposition requesting that the Board withdraw the case with prejudice. Mr. Yaremchuk made a motion that the Board withdraw the case without prejudice. Mr. Hyland seconded the motion and it passed by a unanimous vote of the members present.

Page 462, April 27, 1982, Scheduled case of

8:10 P.M. GREAT FALLS SWIM & TENNIS CLUB, INC. appl. under Sect. 3-103 of the Ord. to amend S-267-79 for a community swim and tennis club to permit addition of a covered pavilion to existing facilities, located 761 Walker Rd., R-1, Dranesville Dist., 13-1((1))27, 5.5 acres, S-82-D-019.

The first speaker, Peter Hoit, represented the swim club. He was the past president and is the current chairman of the finance committee of the club. He stated that Joyce Edgar, the current club president and Bob Flint, the chairman of the construction committee were also present at the meeting. He stated that the membership had remained the same throughout the special permit amendments that had been obtained over the years. He stated that at this time, the club wanted to construct a covered pavilion that would be adjacent to the club house along the east side of the pool deck. The intended use would be as a shelter during inclement weather, to provide shade during swim meets and to provide a shelter and a place to serve food during social events. No expansion is planned for our social activities, which for the last four or five years has been limited to two evening social parties with dinner served, and two A parties on Memorial Day and Labor Day. He stated that the only building that they have now for protection is the club house which contains only a men's and ladies bath. In response to a question from Mr. Hyland, Mr. Hoit stated that the pavilion would be built on a concrete slab with one end enclosed in concrete block and covered with redwood siding. The remainder would be open and the roof would be supported with pillars. There will be a sink draining into the septic field. Mr. Hoit stated that this pavilion was a part of the initial plans and was approved, but for economic reasons it could not be constructed at that time.

Mr. Hyland inquired as to where the water from the roof would be carried. Mr. Hoit stated that there was a runoff drain that would also drain into the septic field. He stated that the pavilion was included in a five year financial plan approved by the general membership, and that there were a least forty families represented at the meeting. No less than twenty-five constitutes a quorum for the club.

The next speaker, Bob Flint, stated that the meeting in regard to this five year financial plan was a large meeting. He stated that there were probably one hundred families in attendance at that time.

Mr. Hoit stated that the club had met with representatives from the surrounding community and the club's activities and this project had been discussed. The indication was that if there were objections, they would attend the BZA hearing and state them.

The next speaker, Carol Ewano, an associate in the firm of Miller, O'Connor, and Buckholds, spoke in opposition. She stated that she was representing Mr. Harold Miller, who could not appear because of family obligations. She presented a letter from two of Mr. Miller's clients, the Addicott Hills Homeowners Association and the Addicott Hills Limited Partnership. Both of these entities own property which adjoins the subject property. She stated that there is a serious drainage and erosion problem in this area. The Addicott Hills Limited Partnership attempted to meet with the swim club in an effort to solve these problems, since the problem seemed to be connected with the drainage of the pool and storm drains. Very little cooperation was gained from the tennis club. It's likely that the new construction will increase the problems which our clients are facing. She stated that a final vote should be deferred on the application pending review of the problem, and that Col. Bill Smith of the County Office of Design and Review has been alerted to this problem. She stated that she felt it was in everyones interest to defer the vote until a study could be completed. Mr. Yaremchuk stated that he disagreed and that this will come under Site Plan Control and at that time, Col. Smith will have an opportunity to correct any drainage or erosion problems that exist.

Page 463, April 27, 1982
GREAT FALLS SWIM & TENNIS CLUB, INC.
(continued)

Mr. Hyland stated that if there were existing drainage problems, he would like to know what they are, and would like to hear the communities position on these problems. Also, if there was a problem, he wanted an indication of the potential impact this new pavilion would have. Mr. Covington stated that the property surrounding the pool is now being developed, and the backwash from the pool is affecting some of the properties. Mr. Yaremchuk stated that the swim club had been there since 1971 and he couldn't understand why there was an erosion problem now.

During rebuttal, Mr. Hoit stated that there was absolutely no problem with respect to drainage of runoff from the ground surface water. That goes into a drainage collecting area which runs into the septic field. That is where any change in draining would go from this construction. Mr. Hoit stated that the drainage problem is the draining of the pool itself. There was no problem with that until the developer of the adjoining development changed the contour of the land. He stated that Mrs. Edgar met with the Plan Review staff and was assured that this was not a problem of the club. He stated that the developer was not issued occupancy permits and cannot get them until he changes the contour of the land back to its original state.

The next speaker was Joyce Edgar, 10102 Spring Hollow Lane, Great Falls, Virginia, the current president of Great Falls Swim and Tennis Club. She stated that she had checked with the County to see if the swim club was in error because of the drainage problems. She talked with Col. Smith from Design Review and John Clayton in Environmental Health. She was present when Mr. Sam Pixley, an inspector from Design Review told the builders representative, Brian Donnolly, that they should consult the engineer for their site and go over the drainage problems they felt they were having and that it was not the fault of the swim club.

Mr. Yaremchuk made a motion to defer decision on the application for one week to let the applicant talk to the opposition and try to resolve the drainage problems. The application was deferred to May 4, 1982 at 11:30 A.M.

Page 463, April 27, 1982, Scheduled cases of

8:30 P.M. FATHY E. ABOUZIED, appl. under Sect. 3-103 of the Ord. for a home professional office (accounting, bookkeeping & tax services), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., S-82-A-001. (DEFERRED FROM 2/2/82 TO ALLOW TIME TO SUBMIT ADDITIONAL INFORMATION AND FROM 3/16/82 FOR FULL BOARD.)

8:30 P.M. FATHY E. ABOUZIED, appl. under Sect. 18-401 of the Ord. to allow home professional office on a lot which has area of 33,312 sq. ft. and width of 110 ft. (36,000 sq. ft. min. lot area and 150 ft. min. lot width req. by Sect. 3-106) and having gravel driveway and parking spaces (dustless surface req. by Sect. 11-102), located 4032 Whitacre Rd., R-1, Annandale Dist., 58-3((5))(2)15, 33,312 sq. ft., S-82-A-001. (DEFERRED FROM 2/2/82 TO ALLOW TIME TO SUBMIT ADDITIONAL INFORMATION AND FROM 3/16/82 FOR FULL BOARD.)

The first speaker, Jeffrey Silverstein, 8993 Coxwold Drive, Burke, Virginia, represented the applicant. He agreed to proceed with the case with only four Board members present. Mr. Silverstein stated that Mr. Abouzied currently lives on the subject property on a full-time basis and is asking for the opportunity to work out of his home. There are no employees and there will be limited traffic. Most of the work comes in by mail rather than personal office visits. Mr. Silverstein stated that most of the houses on the street have essentially the same width and are very deep. He stated that the major vehicular problem on Whitacre Road is from the high school across the street. There will be no change to the exterior of the house. The dustless surface driveway to the house has existed for over twenty years and has been well compacted. He stated that the staff had requested that the driveway be widened, but with the limited traffic he anticipated, he did not feel it was necessary. Any visitors would be parking their cars to the rear of the property out of view from the neighbors. He stated that the property on the corner of Whitacre Road and Route 236, four properties away from the subject property, was zoned for commercial use. This property is located in Fairfax City.

The next speaker was the applicant, Fathy Abouzied. He stated that he had owned the property for two years and had bought it with the intention of working out of his home. He stated that he owned another home which was on the market to be sold. Mr. Abouzied stated that he would need at least one employee for the office. He stated that he had two cars, and four parking spaces were proposed.

Mr. Silverstein stated that Mr. Abouzied would have significant expense in moving to an office. He suggested that it was unfair to deny the application on the basis of lot width. In response to a question from Mr. Hyland, Mr. Silverstein stated that Mr. Abouzied had been practicing his profession for six years. He had previously worked for a company on a part-time basis until he built up a clientele, then had purchased the home so he could have an office.

464

The next speaker, Leonard Carter, 4028 Whitacre Road, spoke in opposition. He stated that he was an immediate neighbor of the subject property. Primarily the main opposition was to maintain the residential nature of this subdivision. He stated that Mr. Abouzied had been maintaining an office at his residence since the fall of 1979. He stated that Mr. Abouzieds clients and employees often park along the street making it difficult to drive down Whitacre Road. Because of an inquiry made by one of the residents to the County offices in the winter of 1981, Mr. Abouzied was requested by the County to remove his shingle from his mailbox. He stated that Mr. Abouzied had made an attempt to live in his residence after these applications were deferred from the March hearing date, but no one is living there during the weekends. Mr. Carter stated that the drainage field in the back of the subject property is only suitable for a two bedroom house, not the proposed four bedroom house. Since June of 1981, Mr. Abouzied indiscriminately cut down some twenty large trees in the back of his house, and ruined the rural look of that part of the neighborhood. He stated that he has seen as many as six cars at a time parked in Mr. Abouzieds' driveway, especially during tax time.

The next speaker in opposition was Michael Fleming, 4059 Trap Road, immediately adjacent to the rear of the subject property. He stated that he was currently in the process of building an addition to his residence, and he was concerned over the possible negative effect a commercial use would have on property values in the neighborhood. Seven years ago when he bought his home, the heavily wooded nature of the community was a large consideration. Later, many of the trees in the neighborhood were lost during a tornado. Mr. Abouzieds' property did not suffer any loss, yet he removed a large number of his trees to be used as firewood. Mr. Fleming stated that he knew any decisions regarding the remaining trees were the right of the property owner, however, he felt such destruction showed a careless disregard for the formerly well screened and private nature of the community. He was concerned that a parking lot in the back yard would cause further removal of trees. Mr. Fleming stated that he was aware that the operation of a home business requires that the property be the primary residence of the owner, but that Mr. Abouzied does not live on the subject property full-time, and hasn't lived there since he bought the property in the fall of 1979. He stated that Mr. Abouzied had been operating this business illegally for this period and lived elsewhere.

During rebuttal, Mr. Silverstein stated that the cars the neighbors were concerned about did not necessarily belong to Mr. Abouzieds' clients, since there was a high school across the street.

Mr. Yaremchuk asked whether or not the office had been operated illegally after the property had been bought. Mr. Abouzied replied that he has lived and worked there. He stated that he had a license from the County to operate a business in his home. He stated that he has had only one one client in his home during that time. Mr. Abouzied stated that he had cut down trees in his yard because they were injured by the tornado. He stated that on several occasions he has had several guests and friends that have parked their cars on the street in front of his house and his neighbors house. He stated that he does not have clients come to his house, just guests. He picks up his clients' books from their office, but occasionally has some guests come to his home. Mrs. Day inquired as to what was discussed when the "guests" came to his home. Mr. Abouzied replied that they discussed a combination of things, including business.

There was no one to speak in support and no one else to speak in opposition to the application.

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-A-001 by FATHY E. ABOUZIED under Section 3-103 of the Fairfax County Zoning Ordinance for a home professional office (accounting, bookkeeping & tax services), located at 4032 Whitacre Road, tax map reference 58-3 ((5)) (2) 15, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 27, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 33,312 sq. ft.

465

Page 465, April 27, 1982
FATHY E. ABOUZIED
(continued)

The Board has received a staff report which suggests that the proposed lot to be used by the applicant does not meet the lot size regulations for the R-1 District in either area or lot width. Particularly the lot has 33,312 sq. ft. whereas the requirement is 36,000 sq. ft. The lot is 110 feet wide and it must be 150 feet wide. The Board has received conflicting testimony as to the question of whether the applicant resides in the property as his home. The Board has received testimony and evidence that would indicate that the proposed use that the applicant has suggested would not comport with the existing community. There is very strong opposition from the neighbors towards the proposed use. There are substantial questions in terms of the prior use of the property not having been in compliance with the rules and regulations of the County.
AND WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. DiGiulian being absent).

Page 465, April 27, 1982 Board of Zoning Appeals
FATHY ABOUZIED
V-82-A-001

Chairman Smith stated that in the Ordinance under the unauthorized variance section, it states that no variance shall be authorized to permit the establishment of a use not otherwise permitted in the zoning district under the specific provisions of the Ordinance. He stated the the Board should not grant a variance that did not meet these requirements, since there had been no change in the Ordinance since the applicant had purchased the property. He stated that the applicant was aware of the conditions at the time the property was purchased. It was the consensus of the Board to deny the variance request.

Page 465, April 27, 1982, Scheduled case of

8:45 P.M. JAMES W. THORNBURG, appl. under Sect. 4-603 of the Ord. for commercial Duplicate Bridge Establishment within condominium office building, located 4532-B John Marr Dr., C-6, Mason Dist., 71-1((31))1-16, 1.17 acres, S-82-M-018. (DEFERRED FROM APRIL 20, 1982 FOR COPY OF LEASE AGREEMENT/SALES CONTRACT AND STATEMENT REGARDING PARKING FOR PROPOSED USE.)

Chairman Smith stated that the Board was in receipt of a memorandum from Mr. Yates regarding the parking for the proposed use. The memo stated that the approximate eighty parking spaces serving the John Marr Professional Center would be available for use by the members of the Bridge Club and would not conflict with parking arrangements for the other firms in this center. It was Mr. Yates judgment that the parking requirements of Par. 18 of Sect. 11-106 are applicable to this use. The memo further stated that it was noted that parking spaces may be provided properly for two or more uses by the provisions of Par. 4 of Sect. 11-102. This paragraph states that the amount of such cooperative parking spaces must equal the sum of the amounts of the separate uses.

Chairman Smith stated that the lease/sales agreement had been provided by the applicant. He stated that the specific square footage involved was not listed in the lease, but an approximate square footage was calculated.

There was no one to speak in support and no one to speak in opposition.

Page 465, April 27, 1982 Board of Zoning Appeals
JAMES W. THORNBURG

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-M-018 by JAMES W. THORNBURG under Section 4-603 of the Fairfax County Zoning Ordinance for commercial Duplicate Bridge Establishment within condominium office building, located at 4532B John Marr Drive, tax map reference 71-1 ((31)) 1-16, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on April 27, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the contract purchaser/lessee.
2. That the present zoning is C-6.
3. That the area of the lot is 1.17 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in C Districts as contained in Section 8-006 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board of such approval. Any changes (other than minor engineering details without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of memberships shall be 60, with 60 at one time.
8. The hours of operation shall be 6:00 P.M. to midnight on weekdays and 1:00 P.M. to midnight on Saturdays and Sundays.
9. The number of parking spaces shall be subject to provisions of the parking in accordance with Article 11.
10. The area used is approximately 1,673 sq. ft.
11. This permit is granted for a period of six months. In the event the premises are purchased after a six month period by this applicant, the permit will be extended indefinitely to this applicant only.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. DiGiulian being absent).

Page 466, April 27, 1982, After Agenda Items

VULCAN OCCOQUAN QUARRY: The Board was in receipt of a letter from Carson Fifer, Jr. requesting that the Board of Zoning Appeals authorize the release of the bond of Vulcan Quarries for the restoration of the site. Mr. Carson was present to discuss the request with the Board. He stated that when one issue regarding fencing was satisfied with the Water Authority, the Vulcan Quarry was in full compliance with the approved adopted restoration plan. Chairman Smith stated that the Board had nothing to do with bonds, and it was up to the proper County agencies to take action on this request. He stated that if they felt the BZA needed to review it, then they should send it back with comments and recommendations. Mr. Carson stated that he felt the Board had to adopt the newly developed restoration plan, and that would allow the County staff to inspect the work they had done. Then, if they were in compliance, the bond could be released. Chairman Smith asked for a staff review and recommendations before the Board could review this request.

Page 467, April 27, 1982, After Agenda Items

V-82-D-026, EDWARD M. JOHNSON: The Board was in receipt of a letter from Edward Johnson asking the Board to reconsider his variance application which was denied on April 13, 1982. The Board of Zoning Appeals had been advised by the County Attorney that they did not have the authority to reconsider or rehear denied cases for a period of twelve months, therefore, it was the consensus of the Board to deny the request.

Page 467, April 27, 1982, After Agenda Items

The Board approved the minutes for July 1, 1980; July 15, 1980 and July 22, 1980 as presented.

// There being no further business, the Board adjourned at 11:00 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

DANIEL SMITH, CHAIRMAN

Submitted to the Board on Dec. 20, 1983

APPROVED:: Jan. 10, 1984
Date

469

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 4, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman (arriving at 11:50 A.M.); John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman called the meeting to order at 10:20 A.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 10 o'clock case of:

10:00 A.M. PIERRE RICHARD CHAN-LOK, appl. under Sect. 18-401 of the Ord. to allow enclosure of existing carport 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307), located 7312 Bath St., R-3, Springfield Dist., 80-3((2))(34)24, 10,720 sq. ft., V-81-S-235. (Deferred from February 2, 1982 for notices).

Mr. Richard Chan-lok of 7312 Bath Street in Springfield was the applicant. Chairman Smith inquired if the applicant had read the section of the Ordinance under which he was applying and whether he was familiar with it. Mr. Hyland stated that the variance had already been deferred once for notices. He was reluctant to have the application deferred again in order for the applicant to go out and hire counsel. Mr. Hyland stated that through a series of questions, the Board should be able to solicit the information in accordance with the Ordinance. Mr. Hyland stated that he realized that was out of order in terms of what the Board normally did. Chairman Smith stated that it behooved the applicant to familiar himself with the section of the Ordinance and not just make an application. Mr. Covington stated that the staff normally ran into applicants who did not comprehend the requirements. He stated that this was just an application for an addition to a dwelling that already was close to the property line. Mr. Covington stated that prior to the new Ordinance, the staff had approved these enclosures without requiring a public hearing.

Chairman Smith stated that he had a problem with the staff making statements for the applicant. Mr. Covington responded that th thought the applicant needed some help. Mr. Hyland stated that the Board did have the applicant's written statement. Mr. Yaremchuk inquired of Mr. Chan-lok whether if the Board deferred the application to allow him time to read the Ord. if he would know what to present at the next hearing. Mr. Chan-lok stated that he would not; therefore, the deferral would not help. Mr. Yaremchuk questioned whether Mr. Chan-lok wished to enclose his carport from a safety point of view and was informed that was correct. Mr. Yaremchuk stated that the Board had a procedure and the Chairman did a good job of sticking to procedures. However, it would be expensive for Mr. Chan-lok to have to hire an attorney. Mr. Yaremchuk felt that it would be fruitless to defer the application. Mr. Yaremchuk inquired if there was any opposition from the neighbors with respect to enclosing the carport. Mr. Chan-lok stated that there was no opposition. In response to further questions from the Board, Mr. Chan-lok stated that he had owned the property for two years. Chairman Smith asked how long the applicant had been in this country and was told four years. Chairman Smith inquired if the applicant was eduated here but was informed Mr. Chan-lok had been educated back home. Chairman Smith inquired if the applicant was employed and he responded that he worked at the World Bank. Chairman Smith stated that the applicant had a good education if he worked at the World Bank. He could not understand why the applicant did not understand the Zoning Ordinance. Chairman Smith stated that it was up to the applicant to present his zoning case.

Mr. Covington stated that the staff had approved these requests administratively prior to 1978 before the change in the Ordinance. Mr. Yaremchuk stated that it was still the same distance. Mr. Covington stated that the variance was minimum as the applicant needed only 1.5 ft. in order to comply with the Code due to the location of the structure on the lot. Chairman Smith stated that the applicant should be saying all that justification as he had a good education. Chairman Smith stated that the Board should not be providing assistance as the gentleman was very capable but had not read the sections of the Ordinance under which he had applied. Mrs. Day inquired if the applicant read English. Mr. Chan-lok stated that he could read. Mr. Covington asked what Mr. Chan-lok did for the World Bank. Mr. Yaremchuk stated that it did not make any difference. Mr. Covington stated that the applicant could be a janitor at the World Bank and really not understand too much English. Chairman Smith stated that the americans were the janitors. Mrs. Day inquired as to why the applicant wanted to enclose the carport and was told it was for safety reasons. Mr. Hyland inquired if there was any other place on the property in which to construct a garage but Mr. Chan-lok stated there was not enough space. Mr. Hyland asked why the garage could not go on any other place of the property. Mr. Chan-lok stated that he would have to put it in the back which would cost a lot of money. Mr. Yaremchuk stated that it was the american way to save money. Mrs. Day stated that from looking at the photographs, there was a large hedge between the two properties which gave privacy. Mrs. Day asked if Mr. Chan-lok had any thefts from his carport and he stated he had not. Mrs. Day stated that it was possible though.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

470

In Application No. V-81-S-235 by PIERRE RICHARD CHAN-LOK under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307) on property located at 7312 Bath Street, tax map reference 80-3((2))(34)24, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982 being deferred from February 2, 1982 for notices; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 10,720 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and it would be impossible to get to the garage if it was constructed in the rear. The carport is existing and enclosure of it into a garage will not encroach any closer to the side lot line.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to an- expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith).

Page 470, May 4, 1982, Scheduled case of

10:10 A.M. GERALD A. & VICKIE M. GOODALE, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 33.1 ft. from a street line on a corner lot (40 ft. min. front yard req. by Sect. 3-107), located 6501 Kalmia St., Springfield Forest Subd., R-1, Lee Dist., 90-2((10))86, 23,135 sq. ft., V-82-L-034.

Mr. Gerlad Goodale of 6501 Kalmia Street in Springfield informed the Board that he and his wife wanted to build an addition to their home. They were located on a corner lot and were required to have a 40 ft. setback from the street on the east. The house would come to within 33 ft. of the street. Mr. Goodale stated that he could not build at the rear as it would place the addition much closer to the side setback. In addition, construction at the rear would require another entrance. Mr. Goodale stated that if he built in this location, it would allow him to widen the driveway and maintain the existing entrance. There were trees and shrubs between his house to screen the addition. By building in this manner, it would allow him to keep a large tree and some shrubbery. Mr. Goodale informed the Board that he had drainage problems around his house and if he built in the back, it would make the drainage worst. Mr. Goodale stated that he had the support of his neighbors. None of them objected to the addition. Mr. Goodale stated that he had tried to consider how the addition would fit in when he planned it. The entire addition would consist of a garage in front and a bedroom with bath at the back. The only required variance was to the front yard requirement which Mr. Goodale considered his side yard. The variance was for 6.9 ft.

Chairman Smith stated that the advertising was not accurate as far as the description of the use itself. The entire front yard constituted a variance. Mr. Hyland stated that the variance was only for a portion of the addition so that it did not seen necessary to advertise the bedroom area. Chairman Smith stated that it did not make any difference as a variance was necessary. Mr. Hyland questioned whether Chairman Smith felt the advertising was correct since it described a garage addition and the Board had a garage addition as well

471

471

as a room being proposed at the rear of the garage. Chairman Smith stated that he felt very sure that was what the applicant was trying to get on the application but it had been changed by staff. Mr. Hyland stated that he felt the advertising was sufficient.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-82-L-034 by GERALD A. & VICKIE M. GOODALE under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 33.1 ft. from a street line on a corner lot (40 ft. min. front yard req. by Sect. 3-107), on property located at 6501 Kalmia Str-et, tax map reference 90-2((10))86, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 23,135 sq. ft.
4. That the applicant's property has an unusual condition in that the lot is substandard as to width and area and is a corner lot with double front yard requirements. The Board has received information that the proposed location of the garage/bedroom addition is the only feasible location for the addition; and further, the applicant has stated that there are drainage problems in the rear yard.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 471, May 4, 1982, Scheduled case of

10:20 A.M. CHELTON T. GIVENS, appl. under Sect. 18-401 of the Ord. to allow construction of two-car garage, dining room & family room addition to dwelling to 16.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2322 Stryker Ave., Little Vienna Estates Subd., R-1, Centreville Dist., 37-2((9))24, 21,800 sq. ft., V-82-C-035.

Mr. Todd Givens of 2322 Stryker Avenue spoke in terms of family hardship and hardship of the neighbors. The addition would increase the security of his home. He informed the Board that his home had been broken into twice. Mr. Givens stated that he wanted to provide a second access to his home and wanted to increase the energy efficiency of the current structure on the north. The dining room for the family was quite small. The youngest child has to sit in the doorway to the kitchen and Mr. Givens sat in the living room doorway. In addition, he was looking for a safe place for the children to play. Mr. Givens stated that there was very little space for his children to play in the bedrooms. Mr. Givens stated that he wanted to put a wood burning stove in the current living toom which would be dangerous for the children. Mr. Givens stated that he would not build to the rear because of the septic area. He stated

472

that the proposed addition was more pleasing to the eye. The neighbors to the north had his entrance on the other side of his property so he would not have to face the addition. Behind the property was land owned by the Fairfax County Park Authority and it was heavily wooded. Mr. Givens stated that there would be sufficient land left so as not to have any problem in the future. There would be sufficient drainage.

Mr. Yaremchuk inquired if the concealment from the park had anything to do with the breakins and Mr. Givens responded that it had been a factor. Mr. Givens stated that the park had horses and tennis. Mr. Yaremchuk inquired if Mr. Givens had purchased his property because of the park. Mr. Givens stated that the ½ acre was a factor as well as the park. Mrs. Day inquired as to the cause of the damage to the existing carport. Mr. Givens stated that a tree had fallen into the carport which prompted his plans for the addition as the carport was completely destroyed. Mrs. Day noted that there was a door at the end of the carport. If the carport was enclosed, it would provide additional security for Mr. Givens' wife and two children who were home all day. Mrs. Day stated that she had not gone to the property but it was very secluded. The houses were rather small on these lots. She stated that it would be easy for someone to advance towards the house and hide in the woods. Mrs. Day stated that the applicant's plans were very conservative.

Mr. Yaremchuk stated that safety was one thing the Ordinance did not cover. However, times had changed and the Board had to consider it as the Ordinance could not think of everything. There was no one else to speak in support and no one to speak in opposition.

Page 472, May 4, 1982 Board of Zoning Appeals
CHELTON T. GIVENS

R E S O L U T I O N

In Application No. V-82-C-035 by CHELTON T. GIVENS under Section 18-401 of the Zoning Ordinance to allow construction of two-car garage, dining room and family room addition to dwelling to 16.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), on property located at 2322 tax map reference 37-2((9))4, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of thelot is 21,800 sq. ft.
4. That the applicant's existing carport was damaged by a large tree falling on it. The property has an unusual condition in the location of the septic field in the rear yard which makes unbuildable. The lot is narrow. The rear yard projects back at an angle to park land which is secluded and the residence has been burglarized twice. The proposed construction would add security of access to the home and peace of mind for the wife who is home alone with two small children all day long. The present dining room is too small for the parents and children to eat together incomfort. All drainage will flow to the rear of the property.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferalbe to other land or to other structures on the same land.

2. This variance shall expire eighteen 18 months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 473, May 4, 1982, Scheduled case of

10:30 A.M. MR. & MRS. RICHARD J. MACCONNELL, appl. under Sect. 18-401 of the Ord. to allow construction of two-car garage addition to dwelling to 8 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 4309 Guinea Rd., Woods of Ilda Subd., R-1, Annandale Dist., 69-2((4))(2)7, 23,100 sq. ft., V-82-A-036.

473

Mr. MacConnell informed the Board that he and his wife wanted to extend 12 ft. into the side yard in order to build a two-car garage. He felt it was just for several reasons. Mr. MacConnell stated that his lot was substandard for the zone and was only 110 ft. wide in lieu of the required 150 ft. width. The location of the house on the north side of the property made it feasible to place the garage in the proposed location. The garage addition would be in character with the surrounding neighborhood. Guinea Road was a County Road, four lanes wide with restricted parking. Mr. MacConnell stated that parking was not allowed in his section of the road. Mr. MacConnell stated that his family had a lot of cars. In addition, Guinea Road was very busy during the morning and afternoon rush hours and it was very difficult to back out into traffic. Mr. MacConnell stated that was the most important reason why he wanted to build a garage. In addition, the garage would add beauty to the house and the neighborhood.

Mr. Yaremchuk questioned the difficulty of backing out onto Guinea Road. Mr. MacConnell stated that he would widen his driveway and drive straight out instead of backing. There was septic and a well on the right hand side of the property. The garage would be on the left. The property was connected to County water. Mr. Yaremchuk inquired as to the problems presented if the garage were constructed at the back of the house. Mr. MacConnell responded that he would have to build a complete addition with four walls. Mr. Yaremchuk asked what the hardship was in this variance. Mr. MacConnell stated that there was a slope in the back yard that would have to be levelled. Mr. Yaremchuk inquired if there was any other features of the property that would be destroyed if the garage were in the back. Mr. MacConnell stated that his wife had a garden in the back yard.

There was no one else to speak in support and no one to speak in opposition.

Page 473, May 4, 1982 Board of Zoning Appeals
MR. & MRS. RICHARD J. MACCONNELL

RESOLUTION

In Application No. V-82-A-036 by MR. & MRS. RICHARD J. MACCONNELL under Section 18-401 of the Zoning Ordinance to allow construction of two car garage addition to dwelling to 8 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), on property located at 4309 Guinea Road, tax map reference 69-2((4))(2)7, County of Fairfax, Virignia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 23,100 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property and to construct the garage to the rear would present a problem with movability and destroy the rear yard. In addition, there is a gradient problem.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This varaince shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 474, May 4, 1982, Scheduled case of

10:40 A.M. GEORGE L. & JANE G. KNAPP, appl. under Sect. 18-401 of the Ord. to allow enclosure of screened porch to 15.1 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2837 Maple Ln., Lee Manor Subd., R-1, Providence Dist., 49-1((4))18A, 20,050 sq. ft., V-82-P-040.

Mrs. Jane Knapp of 4837 Maple Lane in Fairfax informed the Board that she wanted to increase the size of living space as they were anticipating either her mother or her mother-in-law would be coming to live with them. They wanted to have some space for her mother to get away from the activities of a small child. There was a porch which was usable. It had never been used because of the lack of privacy. Maple Lane curved at this spot and drivers were able to look down on the porch. The porch was 15.1 ft. from the side lot line. The Ordinance required 20 ft. Mrs. Knapp stated that her porch was the only one that had not been enclosed. Mrs. Knapp stated that the enclosure would increase her neighbor's privacy to the north as that was the area where he did all his activities. Mrs. Knapp stated that she did not like to sit out on the porch with the neighbors watching. Mrs. Kanpp stated that it was not necessary to expand the size of the porch.

There was no one else to speak in support and no one to speak in opposition.

Page 474, May 4, 1982 Board of Zoning Appeals
GEORGE L. & JANE G. KNAPP

R E S O L U T I O N

In Application No. V-82-P-040 by GEORGE L. & JANE G. KNAPP under Section 18-401 of the Zoning Ordinance to allow enclosure of screened porch to 15.1 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), on property located at 2837 Maple Lane, tax map reference 49-1((4))18A, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is R-1.
4. That the applicant's property is substandard as to area and width. The proposed enclosure would be consistent with the construction of other property in the surrounding area The proposed enclosure of the screened porch will not increase the size of the structure nor bring it any closer to the existing side lot line.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 475, May 4, 1982, Scheduled case of

10:50 A.M. WILLIAM A. JEWETT, appl. under Sect. 18-401 of the Ord. to allow construction of detached garage 3 ft. from side lot line (15 ft. min. side yard req. by Sects. 3-207 & 10-105), located 1911 Kenbar Ct., Kenbargan Subd., R-2, Dranesville Dist., 41-1((24))14, 21,937 sq. ft., V-82-D-038.

475

As the required notices were not mailed out, the Board deferred the variance until May 25, 1982 at 11:15 A.M.

//

Page 475, May 4, 1982, Scheduled case of

11:00 A.M. ALVIN W. WYATT, appl. under Sect. 18-401 of the Ord. to allow construction of garage addition to dwelling to 5.7 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 5809 Boothe Dr., Homewood Subd., R-1, Springfield Dist., 79-1((3))2A, 35,938 sq. ft., V-82-S-039.

Mr. Wyatt of 5809 Boothe Drive informed the Board that he wanted a garage in order to make his home more secure. Chairman Smith inquired if there were any other reasons other than general protection for the vehicles. He asked if Mr. Wyatt had read the section of the Ord. under which he had applied. Chairman Smith explained to the applicant that he needed to prove a hardship and it had to pertain to the land use, topography, etc. Mr. Wyatt stated that his lot was only 115 ft. wide in front. There was a Vepco easement in the back. The proposed location was the place in which to build a garage.

Mrs. Day questioned Mr. Wyatt about the need for the 6 ft. breezeway attached to the proposed garage. Mr. Wyatt explained that there was a step there. In addition, he stated that he would need to get to the back yard. Mr. Wyatt stated that there was a 3 ft. chimney in the garage. Chairman Smith stated that the applicant could narrow the size of the garage by 4 ft. at least. Mrs. Day stated that the applicant did not need the 6 ft. for a breezeway and that the garage should be moved closer to the house. She inquired as to what was located on lot 1-A to the left of Mr. Wyatt's property. Mr. Wyatt stated that there was a septic field on that side of the house which would be adjacent to the garage. In response to further questions from the Board, Mr. Wyatt stated that his neighbor on lot 1-A did not have a garage. However, the neighbor to the right had a garage with a breezeway. Mr. Wyatt informed the Board that he had owned his property for nine years.

Chairman Smith stated that the garage should be moved up flush with the house. He stated that it would not create any problems. Mr. Wyatt stated that then he would not have any room to the pool in the back as there was a fence around the property. The garage would have a gate. Mr. Hyland inquired as to how the Wyatts reached the pool at the present time. Mr. Wyatt stated that he had to go out the back. Mr. Hyland inquired as to the difficulty if the garage were placed flush with the house. Mr. Wyatt responded that people coming to use the pool would have to go through his house. The only reason for the breezeway was for access to the pool in back. Mr. Wyatt stated that he was trying to make his addition compatible with the neighbor's next door. Mr. Wyatt stated that his neighbor had the same arrangement and there was plenty of room. She did not need a variance. Mr. Hyland inquired as to how close the house of the other nieghbor was which had the septic field next to the proposed garage. Mr. Wyatt responded it was 200 ft. away.

There was no one else to speak in support and no one to speak in opposition.

Page 475, May 4, 1982 Board of Zoning Appeals
ALVIN W. WYATT

R E S O L U T I O N

In Application No. V-82-S-039 by ALVIN W. WYATT under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to *5.7 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107) on property located at 5809 Boothe Drive, tax map reference 79-1((3))2A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 35,939 sq. ft.
4. That the applicant's property is substandard in width. Construction of the proposed garage in the rear would interfere with the existing pool. One the right side of the property, there is not sufficient room and construction of a garage at that location would necessitate more of a variance than is presently requested. The proposed location is the most logical location for the garage.

RESOLUTION

476

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is *GRANTED IN PART (to allow construction of garage addition eliminating the proposed breezeway so that the proposed garage is 11.7 ft. from the side lot line) with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

3. This variance is contigent upon applicant providing revised plats in accordance with the modification as outlined in the resolution.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 to 1 (Mr. Smith)(Mr. DiGiulian being absent).

Page 476, May 4, 1982, Scheduled case of

11:10 A.M. FRANK A. LEONE, appl. under Sect. 18-401 of the Ord. to allow resubdivision of 4 lots into 2 lots, with proposed lot 4-B having width of 75 ft. (80 ft. min. lot width req. by Sect. 3-306) and to allow existing garage to remain 23.8 ft. from the rear lot line of proposed lot 4B (25 ft. min. rear yard req. by Sect. 3-307), located 6870 Churchill Rd., R-3, Dranesville Dist., 30-2((2))(b)4 & 30-2((22))(G) 6, 7 & 8, 36,507 sq. ft., V-82-D-014. (DEFERRED FROM MARCH 30, 1982 TO ADD ADDITIONAL INFORMATION TO VARIANCE).

Mr. Frank Leone of 9005 Winding Creek Drive in Vienna informed the Board that he had purchased lot 4 on Ridge Road and lots 1 through 12 from the estate of his father last year. Chairman Smith stated that First Merchants were the Trustees for the property. Mr. Leone responded that Mary Shifflett was the Trust Officer for First & Merchants. Chairman Smith inquired if the purchase had been finalized and Mr. Leone stated that he had purchased it on January 7, 1982. Chairman Smith asked for a copy of the deed.

Mr. Hyland asked that testimony be restated for the opposition who might not have been present at the earlier hearing. Mr. Leone stated that when he purchased lot 4 and lots 1 - 12, he did not know that the house encroached on lots 6, 7 & 8 of Kings Manor. As they could not separate 6, 7 & 8 from the house on lot 4, he wanted to ask for a variance. He stated that he was proposing to subdivide lot 4 in order to get the other building lots that he had lost in 6, 7 & 8. Mr. Leone stated that he was proposing to subdivide four lots into two lots. He indicated that the hardship was the economy. He stated that he had purchased the property from the estate. He had paid a large sum of money for it. Mr. Leone stated that he had decided to sell some of the lots as the high interest cost was eating him up with interest charges. He stated that he needed to do something with it right away before it became an economic disaster.

Chairman Smith informed Mr. Leone that economics was not a factor in the consideration of a variance. Mr. Leone stated that it was because of economics that the house encroached on lots 6, 7 & 8. He stated that there were two acres there now. It was not feasible to keep it together in that area. Chairman Smith stated questioned the two acres as the advertising only listed 36,507 sq. ft. Chairman Smith asked for Mr. Covington for the total square footage involved in the request. Mr. Hyland stated that lots 4A and 4B contained 24,586 sq. ft. and 11,921 sq. ft. totaling 36,507 sq. ft.

(Mr. John DiGiulian arrived at the meeting at 11:50 A.M. and remained for the rest of the scheduled agenda).

Chairman Smith questioned Mr. Leone as to where he was getting the two acres referred to. Mr. Leone stated that lot 4 and lots 1 - 12 contained two acres. Chairman Smith stated that the Board was only talking about lot 4 which contained 36,507 sq. ft. He inquired if Mr. Leone owned the other property also. Mr. Leone stated that he did. Chairman Smith inquired as to when the property was first developed with the house on it. Mr. Leone stated that it had been developed in the mid-50s. Chairman Smith stated that the applicant already had a reasonable use of the property. Mr. Leone stated that there were lots 6 - 12 and lot 4. Only lots 6, 7 & 8 had been built on. The other lots were vacant and for sale.

477

477

Mr. Hyland inquired if the other lots could be developed without any regard to the variance being requested and Mr. Leone stated they could. Mr. Hyland stated that the request before the BZA was asking that four lots be subdivided into two lots which meant that there would be two structures on the lots.

There was no one else to speak in support. Mr. Philip Dietz, Jr. of 1117 Randolph Road represented the Kings Manor Association. He submitted a written statement to the Board. Kings Manor was strongly opposed to the variance application because it did not represent sound development plans. Kings Manor was located to the east of the subject property and was comprised of 200 homes and two separate homeowners associations. Both had jointly studied the variance request and Mr. Dietz represented both groups. He stated that there was no topographic reason for granting the variance and no reason that a 75 ft. lot width should be used to fit in the lay of the land. The applicant owned the adjacent lots but no site plan had been submitted. Mr. Hyland questioned why the applicant would be required to submit a site plan. Mr. Dietz replied that the applicant was asking for a variance to the Ordinance and consideration of the variance would encompass the adjacent property that he owned which was for sale as a single parcel. Mr. Dietz pointed out that the lots had been submitted for townhouses. No rezoning had been obtained. The property was still zoned R-3. The lots were chopped up in a haphazard manner. Mr. Dietz stated that the variance would aggravate the problem. Mr. Hyland inquired as to how it would have that effect. Me. Dietz stated that the lots would have a strange shape with one lot having narrow frontage. Parking was prohibited on the streets and the citizens felt that a sound development plan would show additional parking.

Mr. Dietz stated that the citizens had rebuttal to the applicants statements. He stated that lots 6, 7 & 8 could be appended to lot 4 without a subdivision and there would not be a need for a variance. He stated that the applicant had other options. The house straddled lot lines. Mr. Dietz stated that he would reject the hardship application as the applicant was asking $475,000 for the property which was not a hardship situation. Mr. Dietz stated that the erroneous plats represented poor engineering and a poor planning job that had gone into the project. Mr. Dietz emphasized that the lots were for sale. There was advertising on the property and real estate signs which showed that the applicant was trying to enhance his property. Mr. Hyland stated that was not a bad motive. Mr. Dietz stated that the citizens wanted to see other motives than financial. He indicated that there were fairer ways to earn a buck. The citizens had attempted to compromise and had gotten nowhere. Mr. Dietz stated that granting the variance did not make sense. Kings Manor was a non-profit homeowners group. They wanted to keep the community well planned.

The next speaker in opposition was Dots Amber Keogh of Churchill Road who also represented Diane G. Smigel of 6878 Churchill Road and Mrs. Carol Paddington of Engleside Avenue. Mrs. Keogh presented the Board with a petition signed by 21 of the closest property owners including two contiguous property owners. They were opposed to the application because of false frontage, no hardship, safety, aesthetics, decrease in property values and misrepresentation. Mr. Hyland stated that the applicant was taking four lots and subdividing into two. Mr. Hyland stated that the other lots were not part of the application. Mrs. Keogh stated that she did not understand the situation and felt it was difficult to follow. She stated that the sign was misleading as a lot width variance was not necessary as the applicant had plenty of land. Mr. Hyland explained that the entire parcel was not subject of the application. Mr. Hyland stated that the lots were very narrow. Chairman Smith stated that most of the homes were built on multiple lots. Kings Manor was the only area of townhouses in the area.

Mrs. Keogh stated that the citizens were concerned with what was going to be done with the remaining land even though it was not part of the request because the applicant must have some plans. If his plans were to develop it, she inquired if the applicant could really separate the actions as it was one large parcel of land that was being carved out.

Chairman Smith stated that the Board could take into consideration the affect that the additional proposed dwelling would have on the development. It would affect the existing development and was not in harmony and did not carry out the plan that had been followed for a number of years in the subdivision.

During rebuttal, Mr. Leone stated that he was surprised by the many objections to his request as he had only two to three telephone calls since March 20th. He requested the Board to allow him an opportunity to meet with the owners and come up with a covenant that he could incorporate into the sale of the property. Mr. Leone stated that on April 29th, he had received a restrictive covenant which he had not agreed to concerning the architectural compatibility of the area. He had not agreed to two paragraphs and had rejected the covenant as it restricted the style of homes to Colonial to match the townhouses in Kings Manor.

Mr. Leone stated that he respected the citizens concerns but most of the arguments dealt in other areas. There would not be a decrease in property values. With respect to safety, there were curves in the road but a sign could be placed there. Mr. Leone stated that he intended to build on the lots adjacent to lot 4-B and he requested that the Board grant the variance. In response to questions from the Board, Mr. Leone stated that he had owned the property since January 7th of this year. Mr. Yaremchuk stated that he did not understand the opposition.

RESOLUTION

478

In Application No. V-82-D-014 by FRANK A. LEONE under Section 18-401 of the Zoning Ordinance to allow resubdivision of 4 lots into 2 lots, with proposed lot 4-B having width of 75 ft. (80 ft. min. lot width req. by Sect. 3-306) and to allow existing garage to remain 23.8 ft. from the rear lot line of proposed lot 4B (25 ft. min. rear yard req. by Sect. 3-307), on property located at 6870 Churchill Road, tax map reference 30-2((2))(B)4 & 30-2((22))(G)6, 7 & 8, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982 being deferred from March 30, 1982 for advertising of additional variance; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 36,507 sq. ft.
4. That the applicant's property is exceptionally irregular in shape and has an unusual condition in the location of the existing buildings on the subject property.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 3 to 2 (Messrs. Hyland & Smith).

Page 478, May 4, 1982, Scheduled case of

11:20 A.M. PANACHE BUILDERS, INC., appl. under Sect. 3-503 of the Ord. for community swimming pool, bathhouse, and related facilities, R-5, Mason Dist., 59-4((1))pt. 9A, 31,875 sq. ft., S-82-M-012. (DEFERRED FROM MARCH 23, 1982 AT THE REQUEST OF THE ZONING ADMINISTRATION AND FROM APRIL 13, 1982 FOR PLANNING COMMISSION TO REVIEW CHANGES IN THE DEVELOPMENT PLAN).

Mr. Russell Rosenberg informed the Board that the application had been deferred several weeks ago in order to allow the Planning Commission to review the changes which involved the relocation of the recreational facilities. Mrs. Day stated that the proposed location of the pool was inconsistent and inquired if the plat met the approval of the Planning Commission. Mr. Rosenberg stated that the relocation shifted the pool and it had been approved by the P.C. Mrs. Day also questioned the 22 parking spaces which had been required. She noted that most of the people were within walking distance. The applicant was now proposing 18 parking spaces with twelve bicycle racks. She inquired if the parking requirement had been waived. Chairman Smith stated that the applicant would still have to have handicapped spaces. Mr. Rosenberg stated that he did not have any objections to the handicapped spaces. Chairman Smith stated that in view of the density of the development, the Director of DEM would have the right to waive the parking regulations.

Page 478, May 4, 1982 Board of Zoning Appeals
PANACHE BUILDERS, INC.

RESOLUTION

Mrs. Day made the following motion:

WHEREAS, Application No. S-82-M-012 by PANACHE BUILDERS, INC. under Section 3-503 of the Fairfax County Zoning Ordinance to permit community swimming pool, bath house and related

479

RESOLUTION

479

facilities, located at tax map reference 59-4((1))pt. 9A, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on May 4, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-5.
3. That the area of the lot is 31,875 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT The applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The maximum number of family memberships shall be 315.
8. The hours of operation shall be from 11:00 A.M. to 9:00 P.M., Monday through Saturday and from 12:00 NOON to 9:00 P.M. on Sunday.
9. The minimum number of parking spaces provided shall be 18 plus 12 bicycle racks. One of the required 18 parking spaces shall be for handicapped persons. The requirement of providing a minimum of 22 parking spaces is hereby waived by the BZA in view of the fact that the pool is within walking distance and accessible to its members.
10. There shall be three employees.
11. Unless otherwise qualified herein, extended hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:
    (A) Limited to six (6) per season.
    (B) Limited to Friday, Saturday and pre-holiday evenings.
    (C) Shall not extend beyond 12:00 midnight.
    (D) Shall request at least 10 days in advance and receive prior written permission from the Zoning Administrator for each individual party.
    (E) Requests shall be approved for only one (1) such party at a time, and such requests will be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.
    (F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
    (G) Any substantiated omplaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this panalty shall extend to the next calendar year.

Mr. DiGiulian seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 480, May 4, 1982, Scheduled case of

11:30 A.M. GREAT FALLS SWIM & TENNIS CLUB, INC., appl. under Sect. 3-103 of the Ord. to amend S-267-79 for a community swim and tennis club to permit addition of a covered pavilion to existing facilities, located 761 Walker Rd., R-1, Dranesville Dist., 13-1((1))27, 5.5 acres, S-82-D-019. (DEFERRED FROM APRIL 27, 1982 FOR ADDITIONAL INFORMATION).

480

The Board was in receipt of a letter from Colonel Smith of Design Review regarding the drainage problems connected with the use. Mr. DiGiulian noted that according to Col. Smith's letter, the drainage was being being properly handled and that the downstream development was the cause of the problem. Mr. Hyland stated that the letter was very helpful.

GREAT FALLS SWIM & TENNIS CLUB, INC.

R E S O L U T I O N

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-D-019 by GREAT FALLS SWIM & TENNIS CLUB, INC. under Section 3-103 of the Fairfax County Zoning Ordinance to amend S-267-79 for a community swim and tennis club to permit addition of a covered pavilion to existing facilities, located at 761 Walker Road, tax map reference 13-1((1))27, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on May 4, 1982 being deferred from April 27, 1982 for additional information; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is R-1.
3. That the area of the lot is 5.5 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

THAT the applicant has presented testimony idicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance, and

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes (other than minor engineering details) without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. All other requirements of S-177-71 granted on September 21, 1971 shall remain in effect.
8. Unless otherwise qualified herein, extended hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:
   (A) Limited to six (6) per season.
   (B) Limited to Friday, Saturday and pre-holiday evenings.
   (C) Shall not extend beyond 12:00 midnight.
   (D) Shall request at least 10 days in advance and receive prior written permission from the Zoning Administrator for each individual party.
   (E) Requests shall be approved for only one (1) such party at a time, and such requests will be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.

(F) Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.
(G) Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

481

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 481, May 4, 1982, After Agenda Items

Mr. Duane Beckhorn: The Board was in receipt of a request for an out-of-turn hearing on the variance application of Mr. Duane Beckhorn. It was the consensus of the Board to grant the request and the hearing was scheduled for May 25, 1983 at 1:30 P.M.

//

Page 481, May 4, 1982, After Agenda Items

Approval of Minutes: Mr. Hyland moved that the Minutes of July 29, 1980; July 30, 1980; August 5, 1980 and September 9, 1980 be approved as submitted. Mr. Yaremchuk seconded the motion and it passed unanimously.

//

Page 481, May 4, 1982, After Agenda Items

Road Aggregates: The Board was in receipt of a request from Road Aggregates for an extension of eighteen (18) months. Mr. DiGiulian moved that the BZA only allow a six (6) month extension. Mr. Hyland seconded the motion and it passed by a vote of 3 to 1 (Mr. Smith).

//

Page 481, May 4, 1982, After Agenda Items

Southview Baptist Church, S-80-D-111: The Board was in receipt of a request from Southview Baptist Church for approval of changes in the church plans as well as a six month extension of the special permit. It was the consensus of the Board to approve the changes and allow the construction of Phase I with a review of the other phases before construction. It was noted that the Educational Building was not included in the approval at this time. The Board approved the six month extension.

// There being no further business, the Board adjourned at 1:30 P.M.

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Submitted to the BZA on Jan. 10, 1984

Daniel Smith, Chairman

Approved: Jan. 17, 1984
Date

482

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 11, 1982. All Board Members were present: Daniel Smith, Chairman; John DiGiulian, Vice-Chairman; John Yaremchuk; Gerald Hyland and Ann Day.

The Chairman called the meeting to order at 10:20 A.M. and Mrs. Day led the prayer

The Chairman called the scheduled 10 o'clock case of

10:00 A.M. RICH-LAB ENTERPRISES, INC., appl. under Sect. 18-401 of the Ord. to allow subdivision into four lots, proposed lot 3 having width of 65.10 ft. (100 ft. min. lot width req. by Sect. 3-206), located 4712 Olley Ln., R-2, Annandale Dist., 69-2((1))5, 2.4094 acres, V-82-A-041.

Mr. Richard Labbe, President of Rich-Lab, informed the Board that he was requesting a variance for lot 3 of a proposed subdivision of the Dodson property. It would consist of four wooded lots of over 25,000 sq. ft. in each lot. The property was located west of Braddock Road. Two lots fronted on Olley Lane and two on Hermitage Drive. Lot 3 required a variance because of the frontage which was 65.10 ft., being 34.9 ft. short of the 100 ft. requirement for the R-2 zone. Mr. Labbe explained that the Ordinance measured frontage at the building restriction line which made it even more difficult and necessitated the need for a variance.

Mr. Labbe reviewed the memo from Dave Stroh, Director of Environment and Policy Division in which he had stated: "While the particular lot under discussion for lot width variance is outside of the noise impact area, the other major environmental considerations for this site--slopes and erodible soils--are still relevant. If a 65.10 ft. lot width variance is granted, siting of a dwelling on such a lot becomes somewhat more difficult than on a larger lot with more spatial choice." Two recommendations followed by Mr. Stroh which were: "first, a house sited on such a lot should stay off of the steepest portion of the hill; second, limits of clearing should be established so that grading and development activities on the smaller lot do not contribute to erosion of the soils." Mr. Labbe informed the Board that the exact opposite was true should the variance be granted. He stated that he would site the house in an area that was relatively flat right at the peak of the flat area on lot 3. If the variance were denied, he stated that he would have to build a cul-de-sac 35 ft. in which would run into the erodible soil condition. Mr. Labbe explained that this was a portion of the property that went down quite steeply. He indicated that lot 2 was also quite steep and went down from 385 to 300 which was quite a gulley.

Mr. Hyland inquired if Mr. Labbe had discussed the problem with staff as to what he would encounter. Mr. Labbe stated that he had. At the time he had discussed it, he had gone to the staff with the idea of not going through the BZA. He was trying to get a subdivision approved without the BZA but it had been denied. He stated that he never went any further beyond that. Chairman Smith inquired if Design Review had indicated that the Board of Supervisors had required that the plan be returned for review prior to approval. He stated that apparently this had not been done yet. He asked if there was any indication at the time of rezoning that the applicant was going to request a variance. Mr. Labbe stated that it had not been indicated at the time because they were hoping to be approved without it. Chairman Smith stated that the applicant could construct four houses without a variance and build in accordance with the normal building procedure which was the cul-de-sac. Chairman Smith stated that he was very much opposed to having a dead-end street where an emergency vehicle could not turn around. Mr. Labbe stated that he had discussed that with VDH&T. They had indicated their preference in having no objection to a driveway only on the two lots. They would not recommend a cul-de-sac. Mr. Yaremchuk stated that one reason the VDH&T would not recommend a cul-de-sac was because they hated to maintain them.

Mr. Yaremchuk inquired as to the ownership of the property and was informed it was owned by Rich-Lab Enterprises. It had been purchased in April of 1982. Chairman Smith stated that he agreed with Mr. Yaremchuk about the cul-de-sac being maintained. However, he stated that the property owners who paid taxes were entitled to the same maintenance that other citizens enjoyed in a normal subdivision.

Mr. Lab stated that the people he had talked to in VDH&T had indicated that they did not want the cul-de-sac and would prefer the cul-de-sac. Mr. Lab stated that the property had mature hardwoods and greens and a sloping site. He indicated that if he could place the house closer to the building restriction line, he would have more space. Mr. Yaremchuk stated that the only hardship he had heard was that if the cul-de-sac was built, the applicant would have to move the houses back. Mr. Yaremchuk agreed with the Chairman that this was an economic hardship and not a land use hardship. He stated that the property came under Subdivision Control and that the applicant could build without a variance.

Mrs. Day stated that the applicant had brought up the problem of erosion. If the houses were put back on the slope for lots 2 & 3, she inquired as to what the erosion problem would be. Mr. Lab responded that once you start removing the greens, that's when the erosion starts. Mrs. Day stated that the property went down to Olley Lane at the front. She asked

483

what was to the right side facing the property. Mr. Lab explained there was an existing home. It had the same topographic problems. Mr. Hyland noted that the staff report suggested that a house sited on such a lot "3" stay off the steepest portion of the hill.

Mr. Labbe made one further point to the Board. He explained that should the property have been rezoned to R-3, he would not have needed to get a variance as he would have had enough frontage. However, the property was rezoned R-2 and he did not have enough frontage.

There was no one else to speak in support of the application. Mrs. Joan Hickey and Mrs. Edwards of 9419 Hermitage Drive spoke in opposition. They submitted a letter to the Board from Mr. and Mrs. Robert H. Nightlinger of 9424 Hermitage Drive. Mrs. Hickey read the letter into the record. The citizens were universally opposed to the variance which would cut out the cul-de-sac. They did not want the public street split into two driveways and they urged the Board to deny the variance. If it remained a dead-end, all traffic would have to back up the entire length of Hermitage Drive. There were a number of drivers who make the wrong turn. It was stated that Hermitage Drive was an unusually congested one-block street. There were anywhere from 19 to 22 cars domiciled within the one block street. Turn-around space had always been a major problem. Mrs. Hickey was not certain why there was a problem with wrong turns. Mrs. Hickey lived at the last house and had problems with people knocking down her mailbox while attempting to turn around. She stated that it was a difficult driveway to negotiate. She asked that the Board deny the variance because of the danger to the children and intrusion if the cul-de-sac were not built.

There was no rebuttal by the applicant.

R E S O L U T I O N

In Application No. V-82-A-041 by RICH-LAB ENTERPRISES, INC. under Section 18-401 of the Zoning Ordinance to allow subdivision into four lots, proposed lot 3 having width of 65.10 ft. (100 ft. min. lot width req. by Sect. 3-206), on property located at 4712 Olley Lane, tax map reference 69-2((1))5, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 2.4094 acres.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 483, May 11, 1982, Scheduled case of

10:10 A.M. JAMES J. & CAROL P. GRABULIS, appl. under Sect. 18-401 of the Ord. to allow construction of deck addition to dwelling to 5.8 ft. from rear lot line (14 ft. min. rear yard req. by Sects. 3-507 & 2-412), located 1408 Green Run Ln., PRC, Centreville Dist., 12-3((4))(8)17, 2,786 sq. ft., V-82-C-042.

Mr. James Grabulis of 1408 Green Run Lane informed the Board that the basis for the variance was to allow construction around the natural vegetation at the rear of the home. Behind the home was common ground which meant that the deck would not be an intrusion. In response to questions from the Board, Mr. Grabulis indicated that he had owned the property for four years. Chairman Smith stated that this was a very small lot. Mr. Grabulis stated that he intended to construct a deck last fall. Chairman Smith stated that this was cluster zoning. All of the lots were very small. He asked the applicant what was different about his lot.

Mr. Grabulis replied that his lot was standard and went back in a straight line. It would allow him to extend closer to the rear. Mr. Hyland inquired about other decks in the area. Mr. Covington stated that if the deck had been shown on the development plan, it would have been approved by the Board of Supervisors and would not have required a variance for construction. It was only required if the deck was constructed after the effective date of the Ordinance. Mrs. Day stated that there was common ground behind the property. She asked if Mr. Grabulis had any screening. Mr. Grabulis stated that the common ground was a childrens tot lot and had screening.

Chairman Smith stated that there were a lot of other houses with the same situation. He inquired as to the reason for the odd-shape deck. Mr. Grabulis stated that it was built around a holly tree. Chairman Smith stated that the deck was going across the whole lot. Mr. Grabulis replied that was the standard for all the houses that had decks in his area. Mr. Yaremchuk inquired as to the setback for the townhouse from the street. Mr. Covington stated that it had a comparable 10 ft. front setback. There had not been a setback until the new Ordinance. Chairman Smith inquired if there was any house within 10 ft. of the front Mr. Covington stated that since the new Ordinance came into effect, the PRC zone had to take a comparable zone in order to determine setbacks.

Mr. Grabulis informed the Board that his homeowners association had approved the deck. There was one brick wall which he had to move in 1 ft. There was no one else to speak in support and no one to speak in opposition.

Page 484, May 11, 1982 Board of Zoning Appeals
JAMES J. & CAROL P. GRABULIS

RESOLUTION

In Application No. V-82-C-042 by JAMES J. & CAROL P. GRABULIS under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 5.8 ft. from rear lot line (14 ft. min. rear yard req. by Sects. 3-507 & 2-412), on property located at 1408 Green Runn Lane, tax map reference 12-3((4))(8)17, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is PRC.
3. The area of the lot is 2,786 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property in that the house is situated back three times the required front setback under the Ordinance. If the proposed deck was shown at the time of the rezoning, no variance would have been necessary. If the townhouse had been set back 10 ft. from the front lot line as required by the Ordinance in lieu of the 36.5 ft., no variance would have been necessary for the rear setback. Many comparable decks had been approved under the site plan and the proposed deck will be in conformance with the surrounding area.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. DiGiulian seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 485, May 11, 1982, Scheduled case of

10:30 A.M. WERNER & DOROTHY GROSSHANS, appl. under Sect. 18-401 of the Ord. to allow construction of addition to dwelling to 15.3 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), located 7101 Penguin Pl., R-3(C), Dranesville Dist., 40-1((9))55, 11,853 sq. ft., V-82-D-045.

485

Mr. Werner Grosshan informed the Board that he was requesting a variance to permit him to add to the existing structure at 7101 Penguin Place. The addition would be a wood hobby shop and storage area. The variance would have about 10 ft. to the closest point. Mr. Grosshan stated that this was the best location. He stated that his dwelling was a two story dwelling submerged below basement level. At the point where he wanted to add the addition, it was a two story dwelling. Mr. Grosshan stated that the addition would not be observed by any other property owner. The houses sat at angles to each other. Mr. Grosshan stated that his addition could not be seen because there were not any windows. In addition, he had shrubs and trees. The addition would have a brick veneer on the front and would not be noticable as it would be tucked 22 ft. from the front property line. With respect to the rear portion, no one had any objections. Dulles Access Road was under construction. There was a 20x24 ft. sound barrier which was going up approximately 20 ft. from the proposed addition.

There was no one else to speak in support and no one to speak in opposition.

RESOLUTION

In Application No. V-82-D-045 by WERNER & DOROTHY GROSSHANS under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 15.3 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307), on property located at 7101 Penguin Place, tax map reference 40-1((9))55, County of Fairfax, Virginia, Mr. Hyland moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3(C).
3. The area of the lot is 11,853 sq. ft.
4. That the applicant's property has an unusual lot configuration and the lot is shallow. The location of the proposed addition would be such that it would not be visible readily from the street. The lot owner to the left of the property has substantial screening in the form of trees and shrubbery. The BZA has received testimony that the Dulles Access Road will be constructed at the rear of the proposed property with a substantial concrete sound barrier.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 486, May 11, 1982, Scheduled case of

10:40 A.M. SAMUEL D. LITTLEPAGE, appl. under Sect. 18-401 of the Ord. to allow construction of carport addition to dwelling 30 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207), located 8000 Washington Ave., R-2, Mt. Vernon Dist., 102-2((12))41 & 42, 13,483 sq. ft., V-82-V-046.

486

Mr. Samuel Littlepage of 8000 Washington Avenue informed the Board that he had owned the property since February of 1976. The area was zoned R-2 and he was requesting a variance to the 35 ft. front yard requirement in order to construct an open carport. The basis for the requested variance was because of the 1978 Ordinance requiring the 35 ft. setback. The homes in the area were built in the 1950s. The homes had a 30 ft. front yard uniformily. No one had a 35 ft. setback. Mr. Littlepage was seeking to extend the front roofline parallel to Washington Avenue. He would not be any closer to the street as he was only extending the roofline 13 ft. He was not aware of any objections to his proposal. In addition, he stated that he was unaware of any alternatives that were reasonable. He had received comments from 6 or 7 neighbors who had been notified of the hearing. These people were in favor of the carport as it would add to the appearance of the home and the neighborhood.

There was no one else to speak in support and no one to speak in opposition.

Page 486, May 11, 1982 Board of Zoning Appeals
SAMUEL D. LITTLEPAGE

RESOLUTION

In Application No. V-82-V-046 by SAMUEL D. LITTLEPAGE under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling 30 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207), on property located at 8000 Washington Avenue, tax map reference 102-2((12))41 & 42, County of Fairfax, Virginia, Mrs. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 13,483 sq. ft.
4. That the applicant's property has a very unusual configuration causing a need of a 5 ft. variance. The proposed carport will be in line with the existing dwelling and not any closer to the street than the existing dwelling.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.

2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Yaremchuk seconded the motion.

The motion passed unanimously by a vote of 5 to 0.

Page 486, May 11, 1982, Scheduled case of

10:50 A.M. PARADISE CHILD'S HAVEN, INC., appl. under Sect. 3-403 of the Ord. to amend S-80-A-065 for child care center to permit addition of modular nursery building to existing facilities, increase max. number of children to 87, and change name of permittee, located 4616 Ravensworth Rd., R-4, Annandale Dist., 71-1((1))63, 41,282 sq. ft., S-82-A-021.

Page 487, May 11, 1982
PARADISE CHILD'S HAVEN, INC.
(continued)

As the required notices were not in order, the Board deferred the special permit application until June 22, 1982 at 8:30 P.M.

//

Page 487, May 11, 1982, After Agenda Items

George Parker: The Board was advised that the request for an out-of-turn hearing submitted by Mr. George Parker had been withdrawn.

//

Page 487, May 11, 1982, After Agenda Items

Providence Presbyterian Church: The Board was in receipt of a request from Providence Presbyterian Church seeking an out-of-turn hearing. Mr. Hyland moved that the Board grant the request. Mr. DiGiulian seconded the motion and it passed by a vote of 5 to 0. It was the consensus of the Board to schedule the application for June 15, 1982 at 11:45 A.M.

//

Page 487, May 11, 1982, After Agenda Items

Triangle Development Company: The Board was in receipt of requests for out-of-turn hearings on several variance applications submitted by Triangle Development Company. Mrs. Day moved that the Board grant the request and that the variances be scheduled for June 15, 1982 at 12:00 Noon. Mr. Hyland seconded the motion and it passed by a vote of 4 to 1 (Mr. Smith).

//

Page 487, May 11, 1982, Scheduled case of

11:15 A.M. DONALD W. & RUTH ARLINE RICKMAN, appl. under Sect. 18-401 of the Ord. to allow subdivision into 2 lots, one having proposed width of 18 ft. (80 ft. min. lot width req. by Sect. 3-306), located 6001 Rolling Rd., R-3, Lee Dist., 81-4((1))81, 29,040 sq. ft., V-82-L-030. (DEFERRED FROM APRIL 20, 1982 FOR NOTICES.)

Mr. William L. Schmidt, an attorney in Springfield, represented the Rickmans. He stated that they had owned the property since 1972. The property had remained undeveloped since that time. They were proposing to create two lots in a pipestem configuration because of the way the property was situated on Old Rolling Road. The reason for the application was to be able to construct two single family homes consistent with the area. Mr. and Mrs. Rickman had two sons, Tim, age 22, and Glen, age 28. Both sons were married and desired to subdivide the property in order to construct a home in the area. Mr. Schmidt informed the Board that many of the homes were pre-WWII construction. The design of the proposed structures would increase the property value. Lots 74 and 75 presently had a pipestem situation. Mr. Schmidt stated that the cost of construction and land were high and were increasing over the years with inflation. It would impose a financial hardship on the Rickmans if the variance were not granted. The primary purpose of the proposed subdivision was to create the homes. The people in the area were in favor of the proposal.

Mr. Schmidt called the BZA's attention to a memo that was passed by the Board of Supervisors on May 19, 1980 which talked about pipestem lots. Mr. Schmidt stated that the purpose of the variance was for the immediate family of the Rickmans.

There was no one else to speak in support. Mr. Odt, who resided to the east of the Rickman property, spoke in support to the pipestem lot because it abutted his property. He stated he had a four bedroom split level. He had made a study of the other property and the way it was configured. Mr. Odt stated that he was the person who would be the most impacted by the proposed pipestem but he had no objection to it.

Page 487, May 11, 1982 Board of Zoning Appeals
DONALD W. & RUTH ARLINE RICKMAN

R E S O L U T I O N

In Application No. V-82-L-030 by DONALD W. & RUTH ARLINE RICKMAN under Section 18-401 of the Zoning Ordinance to allow subdivision into 2 lots, one having proposed width of 18 ft. (80 ft. min. lot width req. by Sect. 3-306) on property located at 6001 Rolling Road, tax map reference 81-4((1))81, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

RESOLUTION

488

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 29,040 sq. ft.
4. That the applicant's property is exceptionally irregular in shape including long and narrow.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location indicated in the plats included with this application only, and is not transferable to other land.

2. This variance shall expire eighteen (18) months from this date unless this subdivision has been recorded among the land records of Fairfax County. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 to 1 (Mr. Smith).

Page 488, May 11, 1982, Scheduled case of

11:30 A.M. RICHARD & MARIANNE BROWN AND DICK BROWN CO., INC., appl. under Sect. 18-401 of the Ord. to allow resubdivision of 2 lots into 4 lots with proposed lots 52A & 52C having width of 15 ft. and proposed lot 52 having width of 30 ft. (100 ft. min. lot width req. by Sect. 3-206) and to allow existing houses on proposed lots 52 & 52A to remain 2.0 ft. and 9.3 ft., respectively, from side lot lines (15 ft. min. side yard req. by Sect. 3-207), located 7019 and 7021 Woodland Dr., R-2, Annandale Dist., 80-1((4))52 & 52A, 2.14 acres, V-82-A-033. (DEFERRED FROM APRIL 20, 1982 FOR ADVERTISING OF ADDITIONAL VARIANCE & FOR AMENDMENT TO VARIANCE APPLICATION AS TO OWNERSHIP.)

Mr. Russell Rosenberg, an attorney in Fairfax, represented the applicants. He stated that the parcel contained 2.5 acres. Lot 52A was owned by Dick Brown Co, Inc. and Lot 52 was owned by Marianne and Dick Brown. They proposed to develop the property. The plat showed the nature of the proposed subdivision with the two houses on the lots. Mr. Rosenberg stated that the houses were already in violation of the provisions of the Ordinance with respect to the side yard requirements on the west side of each of the houses. In addition to the two existing lots, the intention of the applicants was to process a subdivision of the lots in order to have two additional lots with frontage along Woodland Drive provided a variance was obtained to the minimum lot width requirements for the R-2 zoning district.

Mr. Rosenberg informed the Board that the property would be developed as pipestem lots. He stated that side yard variances were nothing more than recognition of the existing houses. He stated that the parcel was long and narrow. In terms of the standards for granting variances, the size and shape of the property would justify the granting by the BZA. Mr. Rosenberg stated that this proposal was consistent with property development in the area. A variance had been granted which allowed development of the property across the street for parcel 55 and 56. Houses had been constructed on lot 56A and 56B. Mr. Rosenberg stated that the houses proposed by the Browns were very similar to the other houses in terms of layout. Mr. Rosenberg stated that if the Board looked at the relationship of the houses to the nature of the property, there would still be 150 ft. between all of the houses except for the existing house. There was nothing to be done for the old house.

Mr. Rosenberg stated that there had been some concern raised by Mr. Stroh in his memo concerning the length of the driveway and the orientation of the house with regard to the lot in the rear which was designated as lot 52C on the plat. He stated that if the BZA went out and looked at the other property, the driveway was not unique. Further to the west were similar driveways. With respect to the location of the house on the property, Mr. Rosenberg explained that it had been his experience that the majority of living space was towards the rear of the house. The applicants felt that the house would be better oriented if the rear faced the park in order to allow for more privacy. Therefore, the applicants disagreed with the comments from Mr. Stroh.

Page 489, May 11, 1982
RICHARD & MARIANNE BROWN AND DICK BROWN CO., INC.
(continued)

In summary, Mr. Rosenberg stated that the variance was justified and that the proposed plan was consistent with the character and development in the neighborhood. Mr. Yaremchuk inquired as to the minimum lot width and was informed it was 100 ft. Mr. Yaremchuk inquired if lot 52B was eliminated and the property was divided in the center whether the applicant would still need a variance. Mr. Rosenberg replied a variance would still be necessary. Mr. Yaremchuk inquired as to what basis the applicant used in cutting up the property in this manner as he did not feel it was good planning. Mr. Rosenberg replied that it was done in order to preserve the existing driveway. It would serve the new lots and avoid the four additional curb cuts. Lots 52A and 52C would share a driveway.

Mr. Pelletier, the engineer, informed the Board that immediately to the east of the property was a stream about 75 ft. from the lot line. There would be approximately 50 to 75 ft. of buffer. Mr. Yaremchuk stated that this was an unusual configuration of the lots. He stated that lot 52B bothered him. Mr. Rosenberg replied that it was a nicely treed lot and the applicants did not wish to destroy the trees. Mr. Yaremchuk inquired as to how long the applicants had owned the property. Mr. Rosenberg stated that lot 52A was purchased 4 years ago. Lot 52 was purchased in August of 1981. Mr. Yaremchuk inquired as to why the applicants bought the property. Mr. Rosenberg replied that the Browns had purchased the property in hopes that they could achieve some additional lots on the property.

Mr. Ray Pelletier, the engineer, explained the reason for lot 52B being in the middle as it was the only way to get access to lot 52 in the back. They did not want someone's driveway right in front of the house. Mr. Pelletier stated that he did not feel the proposal was unreasonable.

Mr. Toby Curtis spoke in support of the application. He stated that he was anxious that no trees be removed. This was simply two lots being divided into four lots. If the trees were removed, it would not be very pleasing. Mr. Curtis stated that he lived at 7100 Woodland Drive across the street and up from the applicant's property. Mr. Yaremchuk stated that lot 58 could come in for the same situation. He stated that it looked like the BZA was opening up the area for higher density.

There was no one else to speak in support and no one to speak in opposition. During rebuttal, Mr. Rosenberg addressed the Environmental Analysis. With regard to the driveway situation, there was a long driveway already existing which served the house on lot 52A. What the applicant was doing was asking the BZA to allow that driveway to serve the house on lot 52C. Mr. Rosenberg stated that this situation was unique by virtue of the depth as could be evidenced by the other lots in the area.

The question with regard to the orientation of the house was almost one of personal taste. It was the applicants' feeling that by angling the house, it would be looking into the rear of the existing house and oriented so as to come into the front of the house from the driveway. The desire was to maintain the open space from Leewood Park to the rear of the house. It was more desirable to have that use adjacent to the park.

Mrs. Day questioned Mr. Rosenberg as to whether it was planned to have a basement in the house. Mr. Rosenberg stated that would depend on the building permit and the soil conditions. Mrs. Day stated that the house looked cramped on the lot. Mr. Rosenberg stated that the lots had more than the required square footage for the zone. The layout of the proposed homes was designed to preserve the trees and to utilize the existing driveway. Mrs. Day stated that the applicants were trying to put too much on the property.

Mr. Hyland stated that he had a question about putting too much on the property. He did not feel that to be the case at all. One way to solve that situation would be to level the property and start all over again. He stated that this was not an unreasonable approach at all.

Chairman Smith closed the public hearing. Mr. Yaremchuk stated that he was not in a position to make a motion unless someone else wanted to do it. He stated that a lot of emphasis had been placed on this application and he wanted to take a look at the lot 50A to see the character of the area. Therefore, he moved that the Board defer the decision for a week or two to allow him an opportunity to look at the property. Mr. DiGiulian seconded the motion. The motion passed by a vote of 5 to 0. The decision was scheduled for May 25, 1982 at 11:45 A.M.

//

Page 489, May 11, 1982, After Agenda Items

Approval of Minutes: The Board was in receipt of Minutes for September 11, 1980; September 12, 1980 and September 16, 1980. Mrs. Day moved that the Minutes be approved. Mr. Hyland seconded the motion and it passed by a vote of 5 to 0.

//

// There being no further business, the Board adjourned at 12:15 P.M.

490

By Sandra L. Hicks
Sandra L. Hicks, Clerk to the
Board of Zoning Appeals

Daniel Smith, Chairman

Submitted to the Board on Jan. 10, 1984

Approved: Jan 17, 1984
Date

491

The Regular Meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday Evening, May 18, 1982. The following Board Members were present: Daniel Smith, Chairman; Ann Day, John Yaremchuk and Gerald Hyland. John DiGiulian was absent.

The Chairman opened the scheduled meeting at 8:20 P.M. and Mrs. Day led the prayer.

The Chairman called the scheduled 8 o'clock case of:

8:00 P.M. CENTRAL FAIRFAX SERVICES, INC., appl. under Sect. 3-203 of the Ord. to permit a school of general education, located 5001 Backlick Rd., R-2, Mason Dist., 71-4((1))21 & 22, 3.5649 acres, S-82-M-022.

The first speaker was Mary Ann Paine, 11604 Popes Head Road, Fairfax, Virginia, the Executive Director of Central Fairfax Services. She stated that they were a private non-profit agency providing training, education and supervision for retarded adults who reside in Fairfax County. She stated that the purpose of the education was so these people could leadmore productive lives. At present there are 105 clients and a staff of 32 employees. The hours of operation are 8:30 A.M. until 4:30 P.M., Monday thru Friday, twelve months a year. Transportation is provided by the Northern Virginia Association for Retarded Citizens and one Fairfax County Public school bus. The application is for a continuance of the special permit already granted. She stated that the property was being purchased from the Fairfax Assembly of God Church. Ms. Paine stated that eventually the school would accommodate 150 clients.

Mr. Hyland wanted more information about the review of the facility by the Health Department. He asked how many clients the Health Department had approved, because there was no reference in their report as to how many persons they felt the facility could accommodate. Mr. Hyland asked Ms. Paine if she had made any representation as to the number of persons to be served by the facility. Ms. Paine replied that they would not be serving any food, so the Health Department didn't feel they had to address the situation.

Mr. Yaremchuk asked how long the school wanted the special permit to run. Ms. Paine answered that she expected them to be at that location for at least two years. She indicated that there were ramps already provided for handicapped people, and no changes had to be made to the building or the parking lot for this use.

The next speaker, James Paine, 4921 Backlick Road, Annandale, Virginia, spoke neither in support or opposition. He stated that he had driven a bus for this operation when they were located on Route 7. One of the reasons for moving from there was because of the traffic. He stated that the handicapped people are permitted to walk out in the yard area with no supervision, and he was worried about them walking out onto Backlick Road. Mr. Paine further stated that there was an elementary school next to the church property, and he wanted to know what would stop these people from straying onto that property. He stated that he had problems with some of the people on his bus getting off at the wrong stops, but the school had indicated that he was not responsible for looking after those people. Mr. Paine also wanted to know if the school would have any medical staff to take care of people with epilepsy, etc.

Chairman Smith stated that the school would have a staff of 32 - 40 people and he was sure there would be people adequately trained to take care of emergencies.

Mr. Yaremchuk asked Mr. Covington if there were any complaints received at the Zoning Office pertaining to this school when they were operating on Route 7. When Mr. Yaremchuk received a negative answer, he indicated to Mr. Paine that obviously they did know how to supervise their clients. Mr. Paine asked if the Board could include a condition in the resolution making it mandatory for a fence around the property. Chairman Smith stated that where adults were involved, as long as they comply with all the statues pertaining to the educational facilities, this would be sufficient. He stated that the people operating the school would have to take a responsible position as far as supervising their clients.

During rebuttal, Mary Ann Paine stated that their clients were very well supervised, and if an incident had ever occurred, it would have been brought to her attention. She stated that the school was in the process of putting up a fence, more of a decor fence than a barricade fence. This would be a deterrent for people to come up onto the property and prevent a client from leaving the property if that should ever occur.

Mary Ann Paine stated that her organization had never operated on Route 7. James Paine, the speaker in opposition, indicated that he could have made a mistake, since there were several schools of that nature in that area.

There was no one to speak in support and no one else to speak in opposition.

492

RESOLUTION

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-82-M-022 by CENTRAL FAIRFAX SERVICES, INC. under Section 3-203 of the Fairfax County Zoning Ordinance to permit a school of general education, located at 5001 Backlick Road, tax map reference 71-4 ((1)) 21 & 22, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on May 18, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the contract purchaser/lessee.
2. That the present zoning is R-2.
3. That the area of the lot is 3.5649 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in R Districts as contained in Section 8-006 of the Zoning Ordinance,

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:
1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board of such approval. Any changes (other than minor engineering details without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.
7. The number of clients and/or students shall be 150 with 40 employees.
8. The hours of operation shall be 8:30 A.M. to 4:30 P.M. Monday thru Friday.
9. There shall be 37 parking spaces as shown on the site plan.
10. This application shall be granted for a period of two years.

Mr. Hyland seconded the motion.

The motion passed by a vote of 4 - 0 (John DiGiulian being absent)

Page 492, May 18, 1982, Scheduled case of

8:15 P.M. FRED & ROSALIE L. SCHNIDER, appl. under Sect. 5-503 of the Ord. to permit commercial & outdoor recreation facilities including miniature golf, golf driving range and baseball hitting range, located 14529 Lee Rd., Flint Crest Indus. Park, I-5, Springfield Dist., 34-4((1))pt. 40, 29.263 acres, S-82-S-024.

The first speaker, Mr. Morgan Tiller, 11800 Wayland Street, Oakton, Virginia, presented the application. He stated that this application was for a family recreation center to replace the one currently located in Chantilly, Virginia, a mile and a half away. The center consists of a driving range, a miniature golf course and a baseball batting cage. The name of the operation will be the Flintcrest Family Recreation Center. Mr. Tiller stated that the hours of operation would be from 9:00 A.M. to 11:00 P.M. during the peak operation which is from June through September. From March until the first of May, it would be operated from 9:00 A.M. until dark which is around 7:00 P.M. There are 150 parking spaces which will take care of the peak periods.

There was no one to speak in support and no one to speak in opposition.

493

RESOLUTION

Mr. Hyland made the following motion:

WHEREAS, Application No. S-82-M-024 by FRED & ROSALIE L. SCHNIDER under Section 5-503 of the Fairfax County Zoning Ordinance to permit commercial & outdoor recreation facilities including miniature gold, golf driving range and baseball hitting range, located at 14529 Lee Road, tax map reference 34-4 ((1)) pt. of 40, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on May 18, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is I-5.
3. That the area of the lot is 29.263 acres.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in I Districts as contained in Section 8-006 of the Zoning Ordinance,

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board of such approval. Any changes (other than minor engineering details without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.

Mrs. Day seconded the motion.

The motion passed by a vote of 4 - 0 (Mr. DiGiulian being absent)

Page 493, May 18, 1982, Scheduled case of

8:30 P.M. TYSONS BRIAR, INC. T/A CARDINAL HILL SWIM & RACQUET CLUB, appl. under Sect. 3-103 of the Ord. to amend S-134-78 for community swimming & tennis club to eliminate parking lot on 1 acre parcel and to permit operation of all existing facilities with existing 138 parking spaces, located 9117 Westerholme Way, R-1, Centreville Dist., 28-4((1))47 & 45A, 6.696 acres, S-82-C-025.

For testimony regarding this application, please refer to the verbatim transcript on file in the Clerk's Office.

The application was deferred to June 8, 1982 at 11:45 A.M. to allow the Board members time to view the property.

8:45 P.M. ANDROWOS Y. KULEY, appl. under Sect. 4-603 of the Ord. to permit a miniature golf course in conjunction with an eating establishment, located 7317 Little River Trpk., C-6, Mason Dist., 71-1((23))A, 26,737 sq. ft., S-82-M-020. (DEFERRED FROM APRIL 20, 1982 FOR NOTICES.)

ANDROWOS Y. KULEY, appl. under Sect. 18-401 of the Ord. to allow miniature golf course in conjunction with an eating establishment on a plot containing 26,737 sq. ft. and having width of 60 ft. (40,000 sq. ft. min. lot area and 200 ft. min. lot width req. by Sect. 4-606), located 7317 Little River Trpk., C-6, Mason Dist., 71-1((23))A, 26,737 sq. ft., S-82-M-020. (DEFERRED FROM APRIL 20, 1982 FOR NOTICES.)

The first speaker was Douglas Adams, an attorney in Annandale, who represented the applicant. He stated that Mr. Kuley had run Andy's Pizza in Annandale for twenty years and was a respected business man in the community. Mr. Kuley bought the subject lot in 1978. Mr. Kuley can have the restaurant by right, but wants to add the miniature golf course to provide a mini-recreational family area. Mr. Adams stated that this property is in the heart of the business district with restaurants on each side. The site plan shows twenty-five parking spaces, ten for the golf recreation and fifteen for the restaurant. The lot has access from the front from Route 236 and a wide service drive that would service the restaurant. John Marr Drive is a circular road which runs behind the property and would service the miniature golf course. Mr. Kuley proposes to surround the miniature golf course with a two foot high brick wall and brick pilings, and between those a six foot high wrought iron fence. Mr. Adams stated that this property was zoned commercial in the early 60's and then subdivided in 1967. He stated that there was a letter in the file from Supervisor Davis who was in support of the application. In addition, he handed the Board members a petition containing 284 names, ten of whom reside on the street directly behind John Marr Drive.

The next speaker, Edward K. Uhler, a real estate investment counselor in Annandale since 1945, spoke in support of the application. He stated that the community needs such a situation for the young people. He stated that a number of people in the business community would like to see this take place.

The next speaker, James Brantly, 405 Troy Court, Vienna, Virginia, spoke in opposition to the application. He stated that he was the landlord and owner of the adjacent property, Benningtons. He stated that an outside miniature golf course with a wall would be a blight to the neighborhood and create too much noise. Mr. Brantly thought it would be detrimental to the operation of Benningtons. He stated that when they built it, they were forced to move their building way back from the street to be even with the office building to their right. Then when Marriot came in, they lobbied and were able to move the Bob's Big Boy closer to the street. This fact, along with the new restaurant and mini golf course would effectively block the Bennington sign. He stated that he wanted his sign to be as visible as possible.

The next speaker, Jim Caldwell, the tenant of Bennington's restaurant, spoke in opposition. He stated that he was not opposed to another restaurant next door, but he thought the site was not proper for this type of use. He stated that the site was too narrow. He stated that he foresaw a problem of Mr. Kuley's customers parking in his parking lot during the peak periods, because the site was too small. There is a problem in visibility for our restaurant because it sits back so far. Big Boy blocks it and it cannot be seen until you are right near the site. He stated that he was concerned about a fence, a wall and another building on the front because it was another blockage for Benningtons.

During rebuttal, Mr. Adams showed the Board members a drawing of the type of fence that would be used. He stated that this family recreation center would be a clean, neat and well-lit operation. He stated that the only traffic problem in the area was the overflow parking from Bennington's restaurant on Friday and Saturday night. Mr. Adams stated that Mr. Kuley was providing two handicapped spaces for the restaurant.

There was no one else to speak in support or in opposition to the application.

R E S O L U T I O N

Mr. Yaremchuk made the following motion:

WHEREAS, Application No. S-82-M-020 by ANDROWOS Y. KULEY under Section 4-603 of the Fairfax County Zoning Ordinance to permit a miniature golf course in conjunction with an eating establishment, located at 7317 Little River Turnpike, tax map reference 71-1 ((23)) A, County of Fairfax, Virginia, has been properly filed in accordance with all applicable requirements; and

WHEREAS, following proper notice to the public and a public hearing by the Board of Zoning Appeals held on May 18, 1982; and

495

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. That the present zoning is C-6.
3. That the area of the lot is 26,737 sq. ft.
4. That compliance with the Site Plan Ordinance is required.

AND, WHEREAS, the Board has reached the following conclusions of law:

That the applicant has presented testimony indicating compliance with Standards for Special Permit Uses in C Districts as contained in Section 8-006 of the Zoning Ordinance,

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit shall expire eighteen (18) months from this date unless construction (operation) has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the permit shall remain valid until the request for extension is acted upon by the BZA.
3. This approval is granted for the buildings and uses indicated on the plans submitted with this application. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board of such approval. Any changes (other than minor engineering details without this Board's approval, shall constitute a violation of the conditions of this Special Permit.
4. This granting does not constitute an exemption from the legal and procedural requirements of this County and State. THIS SPECIAL PERMIT IS NOT VALID UNTIL A NON-RESIDENTIAL USE PERMIT IS OBTAINED.
5. 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.
6. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Environmental Management.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent).

R E S O L U T I O N

In Application No. V-82-M-037 by Androwos Y. Kuley under Section 18-401 of the Zoning Ordinance to allow miniature golf course in conjunction with an eating establishment on a plot containing 26,737 square feet and having width of 60 ft. (40,000 sq. ft. min. lot area and 200 ft. min. lot width req. by Sect. 4-606) on property located at 7317 Little River Turnpike, tax map reference 71-1 ((23)) A, County of Fairfax, Virginia, Mr. Yaremchuk moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1982; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the subject property is the applicant
2. That the present zoning is C-6.
3. That the area of the lot is 26,737 sq. ft.
4. That the applicant's property is commercial property and is a neighborhood shopping area having several uses. In other shopping centers there are no property lines and no problems with parking as you would have circulation through the shopping center. In this case, there are property lines. The Ordinance has changed in that at one time it did not require any minimum area but now requires 40,000 sq. ft. The applicant's property is long and narrow but it has access from both sides of the street and parking to accommodate both ends.

496

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVES that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.
2. This variance shall expire eighteen (18) months from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration. A request for an extension shall be filed in writing thirty (30) days before the expiration date and the variance shall remain valid until the extension is acted upon by the BZA.

Mr. Hyland seconded the motion.

The motion passed by a vote of 3 - 1 (Mr. Smith) (Mr. DiGiulian being absent).

Page 496, May 18, 1982, After Agenda Items

The Board was in receipt of proposed amendments to the Fairfax County Board of Zoning Appeals By-Laws. By a unanimous vote, the following amendments were formally adopted; Article I, Membership: The Board shall consist of seven members, Article III, Meetings, Paragraph 3: A quorum shall consist of four members or a simple majority of the Board. The concurring vote of four (a majority of the membership) shall be required to effect any action. Other minor wording changes were also adopted, but the Board members felt that they needed to make more changes to Article III, paragraph 1, so they left it open for discussion at the next meeting.

Page 496, May 18, 1982, After Agenda Items

Committee for the Preservation of Farmland: The Board was in receipt of a letter from Maya Huber requesting an out-of-turn hearing for a special permit filed for a farmers market. It was the consensus of the Board to grant the request.

Page 496, May 18, 1982, After Agenda Items

The Board was in receipt of a memo from Sandra L. Hicks, the Clerk to the BZA, regarding their June 22, 1982 scheduled evening meeting. Ms. Hicks informed the Board that the Board of Supervisors had scheduled a special meeting on that date and it would run into the evening hours. She asked that the BZA meeting be cancelled and the cases moved to another day, since no advertising or notification to the applicants had taken place. It was the consensus of the Board to cancel the June 22, 1982 meeting, and reschedule the cases involved on that day to June 29, 1982. Also, the Board asked that June 29th be changed to an evening meeting.

Page 496, May 18, 1982, After Agenda Items

EDNA TEPPER & T.N.T. CONSTRUCTION COMPANY, V-80-P-177: The Board was in receipt of a letter from Mr. & Mrs. Pete Salas requesting an extension of the above referenced variance application. Although the variance had expired on May 11, 1982 and the letter was dated May 14, 1982, it was the consensus of the Board to grant a six month extension.

// There being no further business, the Board adjourned at 11:00 P.M.

By: Judy L. Moss
Judy L. Moss, Deputy Clerk to the
Board of Zoning Appeals

Daniel Smith
DANIEL SMITH, CHAIRMAN

Submitted to the Board on Jan. 10, 1984

APPROVED: Jan 17, 1984
Date