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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 25, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack and Timothy McPherson were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Pammel gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page / , July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RUDIE & NILA SLAUGHTER, VC 95-H-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 2130 Statute Ln. on approx. 12,119 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 38-1 ((18)) 235.

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

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 12,119 square feet in size, is zoned R-3, and is located on the west of Statute Lane, between Statute Lane and Abbotsford Drive, and is a through lot. The surrounding properties in the Barristers Place subdivision to the north, south, and east are also zoned R-3 and developed with single family dwellings. Residential properties to the west across Abbotsford Drive are zoned R-2.

This request for variance resulted from the applicant's proposal to construct a swimming pool in the front yard along Abbotsford Drive on a lot with less than 36,000 square feet. Section 10-104, Paragraph 11C of the Zoning Ordinance states that no accessory structure or use shall be located in any front yard on any lot containing less than 36,000 square feet.

Rudie Slaughter, 2130 Statute Lane, Vienna, Virginia, stated that no houses face onto Abbotsford Drive. There are fourteen lots that use their Abbotsford Drive frontage as typical back yards, several of these lots have sun rooms, storage sheds, and decks. Mr. Slaughter stated that they do not believe the proposed pool will have any adverse impact on the neighborhood and that the topography of their lot and existing privacy fence will shield the proposed pool from sight. Mr. Slaughter stated the Barrister Place Homeowner Association has given their approval of the pool.

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

Mr. Pammel moved to grant VC 95-H-061 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-061 by RUDIE AND NILA SLAUGHTER, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 square feet, on property located at 2130 Statute Lane, Tax Map Reference 38-1((18))235, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995;

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 12,119 square feet.
4. The applicant has presented testimony indicating compliance with the criteria established by the Zoning Ordinance for the granting of a variance; specifically, the subject property is a through lot with double frontage.
5. There is no alternative for the location for the swimming pool.
6. The request is reasonable.
7. The siting of the house on the lot is at such an angle that it does encroach upon a normal rear yard and if it had been sited differently there probably would have been no need for a variance.

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

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

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

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

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

1. This variance is approved for the location of the specific swimming pool shown on the plat prepared by Harold A. Logan, Associates, PE dated April 27, 1995, submitted with this application and is not transferable to other land.

2. A building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 3, July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DONALD J. MACEWEN, JR., VC 95-Y-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard of a corner lot. Located at 12301 Meadow Field Dr. on approx. 3,146 sq. ft. of land zoned PDH-8 and HC. Sully District. Tax Map 46-3 ((20)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Donald J. MacEwen, Jr. replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating the subject property is 3,146 square feet in size, is zoned PDH-8 and is located on the south side of Meadow Field Drive at its intersection with Rosemeade Drive. The surrounding properties in the Fair Ridge Subdivision are also zoned PDH-8 and are developed with single family attached dwellings.

This request for variance resulted from the applicant's proposal to allow a six foot high fence to remain in the front yard adjacent to Rosemeade Drive. Section 10-104, Paragraph 3B of the Zoning Ordinance states that a fence or wall exceeding 4 feet in height is not permitted in any front yard. Therefore, a variance of 2 feet was required for the existing fence.

Donald J. MacEwen, Jr., 12301 Meadow Field Drive, Fairfax, Virginia, stated that he was not aware that the side of his property is considered a front yard; he erroneously thought it was a side yard. He added that he had made every effort to comply with all codes to the best of his knowledge and did not feel this created a hardship to his neighbors. Mr. MacEwen stated that he has the support of the homeowners association.

Chairman DiGiulian called for speakers in support, and hearing no reply called for speakers in opposition.

Jewell Marquois, 4000 Rosemeade Drive, Fairfax, Virginia, stated that the fence is in violation of the zoning code and a safety issue. She stated that she cannot see when backing out of her driveway.

In rebuttal, Mr. MacEwen stated that the front fence does not block her view of the street; therefore, it was not a safety issue.

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

Mr. Ribble moved to grant VC 95-Y-062 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-062 by DONALD J. MACEWEN, JR., under Section 18-401 of the Zoning Ordinance to permit six foot high fence to remain in the front yard of a corner lot, on property located at 12301 Meadow Field Drive, Tax Map Reference 46-3((20))7, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-8 and HC.
3. The area of the lot is 3,146 square feet.
4. The applicant has met the nine required standards for the granting of a variance; in particular, the lot has a double front yard.
5. This is an unusual situation as the error occurred through the applicant's misunderstanding of the County regulations.
6. The BZA did consider the neighbor's opposition letter, but the photographs clearly show that there is no sight problem caused by the fence.

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

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

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

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

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

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

- 1. This variance is approved for the location of the specific fence shown on the plat prepared by Land Design Consultants dated May, 1995, submitted with this application and is not transferable to other land.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 5, July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BUI TIENG VAN, VC 95-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.9 ft. from side lot line and 14.7 ft. from front lot line. Located at 6528 Annandale St. on approx. 12,558 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 29.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Bui Tieng Van, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that this 12,558 square foot property is located on Annandale Street in the Mason District. The subject property and surrounding lots are zoned R-2 and HC and developed with single family detached dwellings.

This application involved two variance requests. The first request was to permit an 8 foot wide by 35.5 foot long addition to be located 9.9 feet from the east side lot line and the second request was to allow a 10 foot wide by 10.6 foot long addition to be located 14.7 feet from one front lot line of a corner lot. A side yard of 15 feet and a front yard of 35 feet is required by the Zoning Ordinance. Therefore, the applicant was requesting a variance of 5.1 feet to the minimum side yard requirement and a variance of 20.3 feet to the minimum front yard requirement. Staff noted that Valley Street, on which one of the additions will front, has not been constructed adjacent to the applicant's property.

Bui Tieng Van, 6528 Annandale Street, Alexandria, Virginia, stated that she would like to build an addition because their house is very small.

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

Mr. Kelley moved to grant VC 95-M-057 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-M-057 by BUI TIENG VAN, under Section 18-401 of the Zoning Ordinance to permit construction of additions 9.9 feet from side lot line and 14.7 feet from front lot line, on property located at 6528 Annandale Street, Tax Map Reference 72-3((7))29, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 12,558 square feet.
4. The applicant has met the required standards for the granting of a variance; in particular, the front of the addition will be no closer to the lot line than the existing house.
5. The lot is extremely narrow.

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

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

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

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

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

1. This variance is approved for the location and the specific additions shown on the plat prepared by Alexandria Surveys, Inc., dated March 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 7, July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GLORIA J. CRAWFORD, VC 95-S-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard of a corner lot. Located at 8101 Langbrook Rd. on approx. 10,930 sq. ft. of land zoned PRC. Springfield District. Tax Map 79-4 ((7)) 27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Gloria J. Crawford, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that this 10,930 square foot property is located on Langbrook Road in the Springfield District. The subject property and surrounding lots are zoned PRC and developed with single family detached dwellings.

This request for variance resulted from the applicant's proposal to construct a six foot high fence in the front yard of a corner lot. The maximum height allowed for a fence in the front yard is 4.0 feet. Accordingly, the applicant was requesting a variance of 2.0 feet to the minimum height requirement for the fence.

Mr. Dively asked if there were any other front yard fences or any over 4 feet granted in the neighborhood. Mrs. Langdon said not to staff's knowledge.

Gloria J. Crawford, 8101 Langbrook Road, Springfield, Virginia, stated that she believed her application satisfied the nine variance standards. She stated that the purpose for the fence would be to extend the usable backyard area. The fence would not block the view of traffic and she believed that the opposition to the fence was based on the misunderstanding of where on the lot the fence will be built.

Mr. Dively asked the applicant why the fence had to be 6 feet instead of 4 feet. Mrs. Crawford responded that it will be consistent with the original fence and for privacy.

Chairman DiGiulian called for speakers in support. Greg Ragland, Chantilly, Virginia, stated that in looking at the corner lots in the neighborhood there are quite a few with fences extending into the front yard.

Chairman DiGiulian called for speakers in opposition. Nicholas Antonopolus, 8117 Langbrook Court, Springfield, Virginia, stated that he objected to the 6 foot fence and requested that it be limited to 4 feet because it would create a sight distance problem.

In rebuttal, Mrs. Crawford stated that she did not believe the fence would obstruct the view of traffic on Greeley Boulevard.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-S-058 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-058 by GLORIA J. CRAWFORD, under Section 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard of a corner lot, on property located at 8101 Langbrook Road, Tax Map Reference 79-4((7))27, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 10,930 square feet.
4. Some of the neighbors seem to be confused as to where the fence will be located; but, there will no sight distance problem since the fence will be in a side yard and will sit back from the street.
5. The fence addition will be harmonious with the existing fence and will be screened by the existing vegetation.
6. The variance is a modest request and should be approved.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified fence shown on the plat prepared by Alexandria Surveys, Inc., dated April 11, 1995, revised April 26, 1995, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to construct the fence if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 9, July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL LORENZO, VC 95-M-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.33 ft. and eave 1.33 ft. from side lot line. Located at 3126 Shadeland Dr. on approx. 10,881 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 181.

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

Susan Langdon, Staff Coordinator, presented the staff report stating this 10,881 square foot property is located on Shadeland Drive in the Sleepy Hollow Subdivision. The subject property and surrounding lots are zoned R-3, and are developed with single family detached dwellings.

This request for a variance resulted from the applicant's proposal to construct a 18 foot wide by 24 foot long carport addition to be located 2.33 feet from a side lot line with a roof overhang or eave, 1.33 feet from a side lot line. A minimum side yard of 7 feet is required for the carport and a minimum side yard of 9 feet is required

for an eave. Accordingly, the applicant was requesting a variance of 4.67 feet for the carport and a variance of 7.67 feet for the eave.

Michael Lorenzo, 3126 Shadeland Drive, Falls Church, Virginia, stated that the purpose of the carport would be for anticipated handicapped needs. He felt that the market value would not be adversely impacted. He told the Board he used the dimensions from 3112 Shadeland Drive where a variance was already granted.

Mr. Kelley inquired as to the unusual size of the eighteen feet wide carport. Mr. Lorenzo stated that they took paramedics' recommendation for the size and followed 3112 Shadeland Drive dimensions.

Mr. Kelley asked staff if a variance had been granted at 3112 Shadeland Drive. Mrs. Langdon stated that there was no record of a variance being approved at that location.

Chairman DiGiulian called for speakers in support, and hearing no reply called for speakers in opposition.

June Magazine, 3124 Shadeland Drive, Falls Church, Virginia, stated that she was requesting the Zoning Ordinance be upheld and the integrity of their side yard setbacks be maintained. She felt the approval of this variance would adversely affect her property in regard to drainage, light, privacy and property appraisal value.

Sarah Magazine, 3124 Shadeland Drive, Falls Church, Virginia, read a petition signed by residents of Sleepy Hollow Manor stating their opposition.

David Magazine, 3124 Shadeland Drive, Falls Church, Virginia, handed out two opposition letters.

In rebuttal, Mr. Lorenzo stated he made the request based on what he thought was a previously granted variance at 3112 Shadeland Drive.

Chairman DiGiulian asked staff if the carport could be built within seven feet of the sideline by right. Susan Langdon replied affirmatively. The Chairman then closed the public hearing

Mr. Pammel made a motion to deny VC 95-M-063, for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-063 by MICHAEL LORENZO, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.33 feet and eave 1.33 feet from side lot line, on property located at 3126 Shadeland Drive, Tax Map Reference 51-3((11))181, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995;

and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,881 square feet.
4. It appears from some of the material received by the BZA from the neighbors that the existing carport is being used for storage and is not a sightly situation. Perhaps if the applicant used the existing facilities he would be able to address the problem. A carport can be built by right on the right side,

- 5. There is no evidence that the variance referred to by the applicant exists.
- 6. It is not a good situation to grant a variance when it will be necessary for a homeowner to maintain his property by having to trespass onto another's property.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995.

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Page // , July 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LAKE BARCROFT SHOPPING CENTER JOINT VENTURE, VC 95-M-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot line. Located at 6478 Lincolnia Rd. on approx. 42,080 sq. ft. of land zoned C-6 and HC. Mason District. Tax Map 61-3 ((1)) 16B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent, Robert Hayman, replied that it was.

Julie Schilling, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report stating the property is a 42,080 square foot lot located on the southeast corner of Lincolnia Road and the service drive for Columbia Pike. The property adjoins a retail shopping center on the south and east sides of the property, residential uses to the north across Columbia Pike, and a church on the west side across Lincolnia Road.

The applicant has requested a variance to allow an existing parking lot to be located a minimum of 1.5 feet from the two front lot lines of the subject property. The Zoning Ordinance requires that off street parking spaces be a minimum of ten feet from any front lot line; therefore, a variance of 8.5 feet from the minimum distance was requested.

Robert Hayman stated that on Lincolnia Road there have been several prior dedications to VDOT for the widening of the road, which caused the parking spaces to be within ten feet of the lot line. Therefore, because land is no longer available they can not bring these spaces into conformity.

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

Mr. Ribble moved to grant VC 95-M-060 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-060 by LAKE BARCROFT SHOPPING CENTER JOINT VENTURE, under Section 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 feet from front lot line, on property located at 6478 Lincolnia Road, Tax Map Reference 61-3((1))16B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-6.
3. The area of the lot is 42,080 square feet.
4. The applicant has met the nine required standards for the granting of a variance; in particular, there is an extraordinary situation or condition on the subject property and adjacent property whereby the road has been widening generating the need for the variance.

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

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

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

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

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

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

1. This variance is approved for the location of the specified parking spaces shown on the plat entitled "Special Exception, Lake Barcroft Shopping Center", prepared by Holland Engineering, dated May, 1990, as revised through March 13, 1995, submitted with this application and not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 13, July 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MARY F. HARAHAAN, SP 95-D-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line. Located at 1927 Beaver Ln. on approx. 18,596 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((26)) 21. (DEF. FROM 6/6 FOR NOTICES)

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

Susan Langdon, Staff Coordinator, presented the staff report stating this 18,596 square foot property is located on Beaver Lane in the Devon Park Subdivision. The subject property and surrounding lots are zoned R-3. The lot to the north is Fairfax County Park Authority Devon Park. To the east, west and south, the lots

are developed with single family detached dwellings.

This request for a special permit resulted from an error in building location to allow an existing storage shed to remain 6.1 feet from the rear lot line. Section 10-104 states that an accessory storage structure which exceeds eight and one-half feet in height shall not be located closer than a distance equal to its height to the rear lot line. The subject shed is 10.5 feet in height which is therefore the required rear yard. Therefore, the applicant has requested approval for a reduction to the minimum yard requirement of 4.4 feet.

Mary Harahan, 1927 Beaver Lane, McLean, Virginia, stated that the shed was originally built in 1959 and was on the property when she bought it in 1986. It was set on fire by lightning and torn down due to it being a hazard. She stated the insurance company would only reimburse her if she built the shed back according to the specifications that were originally there. Mrs. Harahan stated that the location would not adversely affect anyone and requested the special permit be granted.

Chairman DiGiulian called for speakers in support, hearing no reply called for speakers in opposition.

Barbara Audett, 1944 Foxhall Road, McLean, Virginia, stated that the size of the structure creates a negative visible impact on adjacent properties. She believed there is a two foot height difference which is causing erosion to the adjacent lot. Mrs. Audett requested the special permit be denied and the shed be brought into compliance with the Fairfax County code.

Mr. Kelley had a discussion with the speaker as to how moving the shed four and half feet would address her concerns. She responded that then the roof overhang would no longer drain water onto the adjacent property.

In rebuttal, Mary Harahan stated that the violation of the zoning requirement was not connected with the adjacent property; therefore, it would not adversely affect the speakers property. The moving of the shed would not alter the view and would cause her economic hardship.

Chairman DiGiulian asked Mrs. Harahan if she had built the same size shed and in the exact location of the previous one. She replied affirmatively stating that there was only one difference, and that was in the type of material that was used.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 95-D-013 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-013 by MARY F. HARAHAAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 feet from rear lot line, on property located at 1927 Beaver Lane, Tax Map Reference 40-2((26))21, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- H. The replacement of the shed in approximately the same location and with the same size shed is through no fault of the applicant.
- I. To require the applicant to move the shed in order to bring it into compliance would cause unnecessary economic do nothing to block the neighbor's view of the shed, and might make it worse.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified storage shed shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated February 27, 1995, submitted with this application, as qualified by these development conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 15, July 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. STAN & BETTYE BARRETT, VC 95-V-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 24.0 ft. from front lot line and dwelling to remain 30.0

16
ft. from front lot line. Located at 9200 Wrights Hollow Ln. on approx. 43,077 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 23.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the Staff Coordinator, Don Heine, had informed her that the notices were not in order in this case. She suggested a deferral date to the morning of October 31, 1995.

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Page 16, July 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. TIMOTHY P. & KAY J. FLAHERTY, VC 95-V-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line. Located at 1130 Westmoreland Rd. on approx. 9,375 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 70 and 71.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent, Michael Wheeler, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 9,375 square foot subject property is zoned R-2 and is located on the northeast side of Westmoreland Road within the Wellington Estates Subdivision. The subject property is surrounded by single family detached dwellings in the R-2 District. The Board of Zoning Appeals approved variance VC 88-V-067 for a carport to be located 9.0 feet from a side lot line on lot 72 located northwest of the subject property.

The applicant was requesting a variance to allow an existing screened porch addition to remain and a proposed carport enclosure to be located 11.8 feet from a side lot line. The Zoning Ordinance requires a 15.0 foot minimum side yard. Therefore, a variance was requested for 3.2 feet from the minimum side yard requirement.

Mr. Wheeler stated that few, if any of the lots in Wellington Estates, comply with the zoning in R-2 District and that the BZA has previously granted a variance to Lot 72 and part of Lot 71. The site configuration is exceptionally narrow and small and the lot size has not been reduced or subdivided since 1957. A plat from 1958 shows a structure of the same size on the side of the house indicating that the carport and porch date from that time. Mr. Wheeler submitted a letter from the adjacent homeowner in support of the variance. He stated that the intended use of the private garage would not be contrary to the public interest and would create a hardship.

Mr. Dively asked Mr. Wheeler to clarify that there would be no further extension to the side nor further extension up. He replied that was correct, that it would just be an enclosure of an existing carport.

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

Mr. Dively moved to grant VC 95-V-056 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-056 by TIMOTHY P. AND KAY J. FLAHERTY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.8 feet from side lot line, on property located at 1130 Westmoreland Road, Tax Map Reference 102-2((12))70 and 71, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 9,375 square feet.
- 4. The applicant will merely be enclosing an existing carport.
- 5. Approval of this request will be consistent with previous approvals.

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

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

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

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

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

- 1. This variance is approved for the location of the specific structures shown on the plat prepared by Harold A. Logan, dated February 27, 1995, revised April 12, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 18, July 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM T. MILLER, SP 95-Y-032 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain lots to permit construction of addition 9.9 ft. from side lot line. Located at 15471 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (3) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, William T. Miller, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 13,000 square foot subject property is zoned R-C and is located on the west side of Eagle Tavern Lane within the Weltman Estates Subdivision. The property is surrounded by single family detached dwellings in the R-C District.

The applicant was requesting approval of a special permit to allow a reduction in the minimum yard requirements to allow construction of a 20 foot high addition to be located 9.9 feet from a side lot line. Section 3-C07 requires a minimum 20.0 foot side yard for lots in the RC District. Therefore, a modification of 10.1 feet to the minimum side yard requirement was requested for the proposed addition.

William Miller, 15471 Eagle Tavern Lane, Centreville, Virginia, stated that the property was previously zoned R-2 and developed under the cluster provisions in the Zoning Ordinance which required a minimum side yard of eight feet and total minimum side yard of 24 feet. He stated the addition will be architecturally compatible with the existing structure and had been approved by the homeowners association. The addition will be no closer than the existing structure and will not adversely impact public health or safety in the neighborhood.

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

Mr. Pammel moved to grant SP 95-Y-032 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-032 by WILLIAM T. MILLER, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit construction of addition 9.9 feet from side lot line, located at 15471 Eagle Tavern Lane, Tax Map Reference 53-3((4))(3)4, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,000 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.
8. The applicant has presented testimony that the structure on the lot complied with all the R-2 (Cluster) provisions at the time it was built. The zoning has changed since that time.

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

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standards for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Greenhorne & O'Mara, Inc., dated December 29, 1988, revised by William T. Miller, April 26, 1995, submitted with this application and not transferable to other land.
3. A building permit shall be obtained for the addition prior to any construction and final inspections shall be obtained.
4. The addition shall be architecturally compatible with the existing dwelling.

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A. (DEF. FROM 3/8 AT APP.'S REQ. CHAIRMAN LIMITED TO 5 MINUTES. DEF. FROM 4/12 - APPELLANT MUST BE PRESENT. DEF. FROM 6/7, 10/25, AND 4/25/95 AT APPELLANT'S REQUEST)

William Shoup, Deputy Zoning Administrator, advised that the Board had a memorandum dated July 17, 1995 that provided the background on this appeal. They were last before the BZA on April 25, 1995 and the appeal was continued to allow additional time for the appellant to try and resolve this issue. Since April 25th, the appellant has worked diligently and kept staff informed of their attempts to obtain site plan approval. They resubmitted a site plan on June 16th and staff discussions with DEM indicated that site plan approval was imminent. Given the appellants efforts and the possibility of resolving the issue in the next several months, as indicated in the July 17 memorandum, they would withhold any enforcement action for a period of 90 days. Mr. Shoup recommended that the BZA take action to uphold the determination so they can work with the appellant to get this resolved.

The appellant's agent, David Canfield, stated that since the last hearing they have obtained the Non Residential Use Permit for the rental truck parking, which was one part of the zoning violation citation. They are now dealing with the continued new vehicle storage on the back part of the lot, which required them to redesign storm water management. Their consultants met with representatives of Department of Environmental Management and the Fairfax County's Attorneys Office to assure that the solution they came up with was a workable solution, which both representatives indicated that it was. They submitted a redesigned site plan for review on June 16th, and it was their understanding that the reviewing staff is satisfied with it.

On June 27th they were advised that as part of the site review and approval process there would be a requirement for dedication of a portion of the frontage along Route 29, the dedication plat and the executed deed of dedication has been prepared. All the necessary bonding calculations and bond documentation has been completed and they have posted the bonds and paid the revision fees. The engineering plans for the work on the storm water management has been prepared and sent out for pricing. They intend to complete this process as quickly as possible and will proceed with the construction of the improvements and in obtaining a Non Residential Use Permit for the new vehicle storage on the lot. They are requesting the additional 90 days in order to get the site plan issued and the construction completed.

Mr. Kelley stated that it was at his instigation that no further deferrals be granted however, in light of the testimony presented by Mr. Canfield and Mr. Shoup, he would go along with the 90 day deferral with the hope that the appeal will be withdrawn.

Mr. Shoup commented on Mr. Kelley's statement, stating that the appellant is keeping them informed and that they now have a good situation, unlike before. He stated he would have no objection to the BZA deferring the appeal and was confident it will soon be resolved.

Chairman DiGiulian closed the public hearing.

Mr. Ribble stated that he agreed with Mr. Kelley, and since the applicant was cooperating, he would recommend that they defer for 90 days. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. McPherson absent from the meeting. The hearing was deferred to the morning of November 14, 1995.

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Page 21, July 25, 1995, (Tape 2), Action Item:

Request for Reconsideration
Mount Vernon Yacht Club, SPA 80-V-028

Mr. Kelley moved to deny the request for reconsideration and Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 21, July 25, 1995, (Tape 2), Action Item:

Request for Reconsideration
Sharkey's Billiard Parlor, SP 95-V-031

Mr. Dively moved to deny request for reconsideration and Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 21, July 25, 1995, (Tape 2), Action Item:

Approval of Resolutions
from July 18 and July 20, 1995

Chairman DiGiulian moved to approve the resolutions from July 18, and July 20, 1995. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 21, July 25, 1995, (Tape 2), Action Item:

Request for Acceptance and Scheduling of Appeal
Laying and Company Greenhouses Ltd.
Staff suggested morning of October 24, 1995

Mr. Dively moved to accept and schedule the appeal for the morning of October 24, 1995. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 21, July 25, 1995, (Tape 2), Action Item:

Request for Acceptance and Scheduling of Appeal
Richard P. and Randy Mitchell
Staff suggested morning of October 24, 1995

Mr. Kelley moved to accept and schedule the appeal for the morning of October 24, 1995. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 22, July 25, 1995, (Tape 2), Action Item:

Request for Additional Time
Apostolic Church of Washington, Inc., SP 91-Y-036

Mr. Pammel moved to grant. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 22, July 25, 1995, (Tape 2), Action Item:

Request for Additional Time
Trustees of Faith Presbyterian Church, SP 92-L-020


Mr. Pammel moved to grant. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

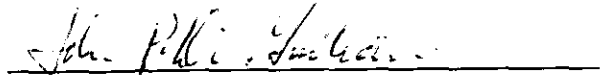
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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Teresa M. Wang

Approved on: October 10, 1995


Betsy S. Hufft, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on August 1, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Mr. Hammack and Mr. McPherson were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:13 a.m. and Mr. Pammel gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 23, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EXXON CORPORATION, VC 95-M-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 16.4 ft. from rear lot line and parking spaces to remain 0.14 ft. from front lot line. Located at 6550 Edsall Rd. on approx. 25,957 sq. ft. of land zoned C-5. Mason District. Tax Map 71-4 ((7)) 17 and 19. (IN ASSOCIATION WITH SE 95-M-021)

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

Julie Schilling, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report stating the application property is a 25,957 square foot lot located on the northeast corner of Edsall Road and Mitchell Street. The property adjoins a single family dwelling to the north, an undeveloped residentially zoned lot to the west, an office building and industrial uses to the south, and a service station to the east.

The applicant requested a variance to allow an existing building to remain 16.4 feet from the rear lot line of the subject property. The Zoning Ordinance requires that the building be set back a minimum of 20 feet from the rear lot line; therefore, a variance of 3.6 feet was requested. The applicant also requested a variance to allow 9 parking spaces to remain 1.4 feet from the front lot line. The Zoning Ordinance requires that a minimum of 10 feet be maintained between the parking spaces and the front lot line; therefore, a variance of 9.86 feet was also requested. She noted on July 28, 1995, staff received a revised plat that showed the addition of two parking spaces to the site. The proposed spaces were in compliance with Ordinance requirements and were not a part of the request.

Ms. Schilling also noted the special exception, associated with the special permit, was approved on July 31, 1995.

Keith Martin, with the law firm Walsh, Colucci, Stackhouse, Emrich & Lubeley P.C., stated nothing would be done to the existing building, but landscaping and a canopy would be added to the site.

In response to Mr. Pammel's question, Mr. Martin replied the structure and the parking were erected in 1968.

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

Mr. Pammel moved to grant VC 95-M-027 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report dated July 31, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-027 by EXXON CORPORATION, under Section 18-401 of the Zoning Ordinance to permit existing structure to remain 16.4 feet from rear lot line and parking spaces to remain 0.14 feet from front lot line., on property located at 6550 Edsall Road, Tax Map Reference 71-4((7))17 and 19, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is C-5.
3. The area of the lot is 25,957 square feet.
4. The applicant has presented testimony in compliance with the nine required standards for a variance.
5. The condition has existed since 1968.
6. The building and parking was constructed under the previous Zoning Ordinance.

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

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

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

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

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

1. This application is approved for the location of the specific building and parking spaces shown on the plat entitled "Variance Plat, 6550 Edsall Road", prepared by The Plan Source, dated July 31, 1995, submitted with this application and is not transferable to other land.

Pursuant to Section 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced on the relocation of the gas islands. The Board of Zoning Appeals may grant additional time to commence construction if a written request

Page 25, August 1, 1995, (Tape 1), EXXON CORPORATION, VC 95-M-027, continued from Page 24

for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Dively was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel motioned to waive the 8 day waiting period for all the applications scheduled for August 1, 1995 due to the August recess, it was seconded by Mr. Ribble. The motion carried by a vote of 4-0 with Mr. Dively not present for the vote. Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 25, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EXXON CORPORATION, VC 95-P-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of structure 3.8 ft. from rear lot line. Located at 2081 Chain Bridge Rd. on approx. 23,994 sq. ft. of land zoned C-8 and HC. Providence District. Tax Map 39-1 ((3)) 1A. (IN ASSOCIATION WITH SE 95-P-022)

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

Robby Robinson, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report stating the subject property is located at the southwest corner of the Chain Bridge Road and Old Courthouse Road intersection. The property is 23,994 square feet in size and is zoned C-8, Highway Corridor, and Sign Control Overlay Districts. It is currently developed with an Exxon service station with three service bays and three pump islands; to the north, across Chain Bridge road, is a Mobil service station and an office building; to the south, is a vacant lot which was approved on July 31, 1995 by the Board of Supervisors for a Taco Bell; to the east, across Old Courthouse Road, is an office building; to the west, is a McDonald's fast food restaurant. On July 31, 1995, the Board of Supervisors approved the associated application, SE 95-P-022, which permitted the demolition and rebuilding of the service station site. The variance request was from the rear yard requirement to permit the construction of the new service station building 3.8 feet from the rear property line. In the C-8 District, there is a 20 foot rear yard requirement; therefore, this request was for a 16.2 foot variance from the minimum rear yard requirement.

In response to Mr. Ribble's inquiry, Mr. Robinson replied the existing structure was 1.1 feet from the rear lot line.

Keith Martin, with the law firm Walsh, Colucci, Stackhouse, Emrich & Lubely P.C., stated a variance was obtained in 1965 to allow the existing building to be 1.1 feet from the rear property line. He said Exxon wanted to demolish the building and build a smaller building in approximately the same location. He further noted the Board of Supervisors agreed this was the best design for the property.

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

Mr. Ribble moved to grant VC 95-P-045 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 8, 1995.

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COUNTY OF FAIRFAX, VIRGINIA**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-P-045 by EXXON CORPORATION, under Section 18-401 of the Zoning Ordinance to permit construction of structure 3.8 feet from rear lot line, on property located at 2081 Chain Bridge Road, Tax Map Reference 39-1((3))1A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 23,994 square feet.
4. The applicant met the nine required standards for variance.
5. There is an unusual condition and situation on property.
6. The new structure is not as close to the lot line.
7. The design is the only one that works on the property.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict

interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

- 1. This application is approved for the rear yard variance as shown on the plat entitled Variance Plat, 2081 Chain Bridge Road, prepared by The Plan Source, which is dated March 1995, and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 27, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JENNIFER T. RIORDAN, VC 95-S-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.3 ft. from rear lot line. Located at 8817 Aquary Ct. on approx. 11,908 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 225.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jennifer Riordan, 8817 Aquary Court, Springfield, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the subject property is zoned R-3 and is developed under the Cluster provisions of the Zoning Ordinance. The surrounding properties are also zoned R-3 and developed with single family detached dwellings. The variance request was to allow an addition consisting of a kitchen addition and sunroom to be located 20.3 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard in this District; therefore, the applicant requested a variance of 4.7 feet to the minimum requirement. The dwellings on Lots 229 and 230 are located approximately 46.7 and 31 feet, respectively, from the shared rear lot line.

Ms. Riordan stated the property has an exceptional shape with angled boundary lines, thus the addition could only be placed at the proposed location. She said the proposed room would be an extension of the kitchen to include an eating area and a sunporch.

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

Mr. Kelley moved to grant VC 95-S-064 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-064 by JENNIFER T. RIORDAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.3 feet from rear lot line, on property located at 8817 Aquary Court, Tax Map Reference 89-3((6))225, Mr. Kelly moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 11,908 square feet.
4. Applicant has met the required standards for variance.
5. The lot is irregular.
6. There are exceptional topographical conditions.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would

deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Charles J. Vincent, P.E., dated March 1, 1995, and revised May 16, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Dively was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 29, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GERMAN LOPEZ, VC 95-M-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 1.7 ft. from side lot line and 6.0 ft. high fence to remain in the front yard. Located at 3035 Castle Rd. on approx. 14,336 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((13)) 61A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. German Lopez, 3035 Castle Road, Falls Church, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the subject property is zoned R-3 and is developed with a single family detached dwellings in the Buffalo Hills subdivision. The surrounding lots are also zoned R-3 and developed with single family detached dwellings. The variance request was to allow a single car carport to be located 1.7 feet from the western side lot line and to allow a 6 foot high fence to remain in the front yard. The minimum side yard in this district is 12 feet and the permitted extension for a carport is 5 feet; therefore, the structure should be located 7 feet from the lot line and the applicant requested a variance of 5.3 feet for the carport. Section 10-104 of the Zoning Ordinance prohibits a fence in excess of 4 feet in the front yard.

Mr. Lopez stated the property was very narrow and the only place to put a carport was on the existing driveway. He stated most of the neighbors had carports or garages and the fence on the property belonged to the neighbors.

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

Mr. Pammel moved to grant VC 95-M-068 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-068 by GERMAN LOPEZ, under Section 18-401 of the Zoning Ordinance to permit construction of carport 1.7 feet from side lot line and 6.0 feet high fence to remain in the front yard, on property located at 3035 Castle Road, Tax Map Reference 51-3((13))61A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,336 square feet.
4. The applicant presented testimony that is in compliance with the nine required standards for a variance.
5. The lot is very narrow.
6. The existing driveway is on the narrow side of the lot and applicant has no other options for the carport.
7. The applicant presented testimony that the existence of the fence was not brought about by him.
8. The fence does not cause problems or restrict vision.

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

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

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

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

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

1. This variance is approved for the location of the specific carport and fence shown on the plat prepared by Gallifant, Hawes & Jeffers, dated May 11, 1995, and revised June 28, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction of the carport and final inspections shall be approved.
3. The carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Dively was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 31, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JACKSON J. BOWDEN, JR. & PATTY M. LOVETT, VC 95-B-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from street line of a corner lot and 4.33 foot high fence in front yard. Located at 4339 Andes Dr. on approx. 15,150 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 95.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jackson Bowden, 4339 Andes Drive, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine, stating the 15,150 square foot subject property is zoned R-3. It is a corner lot which fronts on Andes Drive and Roma Street. The site is surrounded by single family detached dwellings in the R-3 District.

The applicants requested approval of two variances. Variance one was to allow a two-story addition with a room over a garage to be located 15.0 feet from a street line. The Zoning Ordinance requires a 30.0 foot minimum front yard; therefore, a variance of 15.0 feet was requested. The second variance request was to allow a 4.33 foot high fence to remain within the southern front yard. The Zoning Ordinance does not allow fences over 4 foot high in the front yard; therefore, a variance of 0.33 feet was requested.

Ms. Kelsey further noted the applicants previously had a six foot high fence and a zoning inspector advised them to cut the fence down to 4 feet. The fence was cut down to what they and the inspector thought was 4 feet; however, they were advised recently that the fence was 4.33 fence thus the need for the variance.

Mr. Bowden said they were confused about the fence issue because they thought it was resolved years ago.

He said the variance request was not common in their neighborhood and there was no other viable place on the lot to build the addition because in the rear of the lot are large trees. He discussed the vandalism experienced in the area.

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

Mr. Ribble moved to grant VC 95-B-065 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-065 by JACKSON J. BOWDEN, JR. & PATTY M. LOVETT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from street line of a corner lot and 4.33 foot high fence in front yard, on property located at 4339 Andes Drive, Tax Map Reference 57-3((7))95, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,150 square feet.
4. The applicant has met the required standards for variance.
5. This is a corner lot and has the hardship of 2 front yard setbacks.
6. This is the only place for the addition because of the large trees on the lot.
7. This is an extraordinary situation.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition and 4.33 foot high fence shown on the plat prepared by Rice Associates, dated August 15, 1990, recertified by Rice Associates, dated August 26, 1993, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained for the two-story addition prior to any construction and final inspections shall be approved.
3. The two-story addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 33, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT S. & MARIANN MARONA, VC 95-Y-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from rear lot line. Located at 15081 Stillfield Pl. on approx. 13,068 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mariann Marona, 15081 Stillfield Place, Centreville, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine, stating the 13,068 square foot subject property is zoned R-C and WS and is located on the northeast side of Stillfield Place within the Pleasant Hill Subdivision. The property is surrounded by lots in the R-C District. Single family detached dwellings adjoin the subject property on the south, west, and partially on the north while Cub Run Stream Valley Park adjoins the site on the east and partially on the north.

The applicants requested a variance to allow a 5.5 foot high deck to be located 12.0 feet from the rear lot line. The Zoning Ordinance requires a 13 foot minimum rear yard for decks which exceed 4 feet in height. Therefore, a variance was requested for 1.0 feet from the minimum rear yard requirement.

On May 17, 1995, the Board of Zoning Appeals approved VC 95-Y-015 on the subject property for a screened porch addition to be located 9.3 feet from the rear lot line. During the review of the application, the staff inadvertently missed the location of the proposed deck.

Ms. Marona informed the Board of the reasons she applied for a variance, and said granting the variance would allow a level, secure yard for her 1-year old son.

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

Mr. Kelley moved to grant VC 95-Y-085 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-085 by ROBERT S & MARIANN MARONA, under Section 18-401 of the Zoning Ordinance to permit construction of a 5.5 feet high deck to be located 12.0 feet from rear lot line, on property located at 15081 Stillfield Place, Tax Map Reference 53-4((5))(2)40, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,068 square feet.
4. The applicant has met the required standards for variance.
5. The lot has an exceptional shape.
6. The variance is very minimal.

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

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

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

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

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

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

1. This variance is approved for the location of the specific screened porch addition shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated December 1993, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 35, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LORA J. & MARK R. NEEL, VC 95-D-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yard and accessory uses and structures to exceed 30% of the minimum required rear yard coverage. Located at 1418 and 1422 Dolley Madison Blvd. on approx. 18,290 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (R) 10-16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Gray, Agent, 1568 Springhill Road, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine, stating the 18,290 square foot subject property is zoned R-3 and is located on the north side of Dolley Madison Boulevard within the Beverly Manor Subdivision. The property is surrounded by single family detached dwellings in the R-3 District on three sides and by offices on the south that are in the C-2 and C-3 Districts.

The applicants originally requested two variances. Variance one was to allow a 6.0 foot high fence to be located in the southern front yards of three proposed lots. The Zoning Ordinance does not allow fences over 4 foot high in the front yard. Therefore, a variance of 2.0 feet was requested. The second variance request was to allow accessory structures, specifically a driveway, to cover 36% of the minimum required rear yard. Section 10-103 of the Zoning Ordinance does not allow accessory structures to cover more than thirty (30) percent of the area of the required rear yard. However, the Zoning Administrator determined that driveways were not accessory uses. Therefore, this variance was not necessary.

Mr. Gray stated a six foot high fence would help alleviate some of the noise from Dolly Madison Boulevard. He stated only one driveway was proposed for the houses, instead of three driveways, due to safety issues.

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

Mr. Dively moved to grant VC 95-D-067 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-067 by LORA J. & MARK R. NEEL, under Section 18-401 of the Zoning Ordinance to permit 6.0 foot high fence to remain in the front yard and accessory uses and structures to exceed 30 percent of the minimum required rear yard coverage, on property located at 1418 and 1422 Dolley Madison Boulevard, Tax Map Reference 30-2((4))(R)10-16, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 18,290 square feet.
4. This is a unique circumstance.
5. The property abuts Dolley Madison Boulevard.
6. The property is in harmony with other developments in the area.

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

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

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for the location of the specific 6.0 foot high fence as shown on the plat prepared by Jarrett Surveys, Inc., dated May 4, 1995, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction for the fences have commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel noted this case was another example where there were three recorded lots and none of which met the minimum Ordinance requirement for the lot area. He stated he assumed the Board was doing this again because there had not been changes made to the Ordinance in order to require consolidation to meet minimum yard requirements. Ms. Kelsey replied staff requested of the Zoning Administrator to put the request on the work list of Zoning Ordinance amendments but nothing had been adopted thus far.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 37, August 1, 1995, (Tape 1), Scheduled case of:

9:30 A.M. FAIRFAX UNITARIAN CHURCH, SPA 83-P-053-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-053 for church and related facilities to permit private school of general education, child care center and change in development conditions. Located at 2709 Hunter Mill Rd. on approx. 10.57 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 23. (OUT OF TURN HEARING GRANTED)

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

David Hunter, Staff Coordinator, presented the staff report stating the subject property is 10.57 acres in size and is located on the west side of Hunter Mill Road. To the south is the Church of Jesus Christ of Latter Day Saints, and single family residences are located along all other property lines. Access to the site is and remains via an asphalt commercial entrance located at the southwest corner of the site. The applicant has expanded the parking lot to include 165 gravel parking spaces which are located on both sides of the asphalt entrance drive.

The applicant, Fairfax Unitarian Church, requested an amendment to SP 83-P-053 for church and related facilities, to allow a private school of general education, a child care center, and a change in the development conditions to increase the parking from 76 spaces to 165 spaces.

The existing church sanctuary has 300 seats and a private Montessori school. The child care center will have a maximum of 40 students.

The hours of operation for the private school and child care center are 7:30 a.m. to 6:00 p.m. The church has 3 full time, and 2 part-time employees, and the private school and child care center will have 4 employees.

The Board of Zoning Appeals denied SPA 83-P-053 which included a request to locate 3 temporary trailers on the site, and because this special permit was denied, the Montessori school and child care center continued to be in violation of the Zoning Ordinance. The special permit to allow these uses expired on October 13, 1992. After the public hearing, the Board of Zoning Appeals waived the 12 month waiting period to file a new application. The applicant amended their special permit plat to relocate the play area which is now located 110 feet from the western side property line. Staff requested the applicant provide a six foot board on board fence along the property line adjacent to Lot 4.

Ms. Strobel, from the law firm Walsh, Colucci, Stackhouse, Emrich, and Lubeley, discussed the history of the church, school, and day care center. She stated the previous special permit lapsed due to an oversight. Ms. Strobel noted the same 40 students would be in the child care center all day and they wouldn't be coming in and out of the site at all times of the day. She said the applicant also requested an increase in parking and presented photographs of the existing parking. Ms. Strobel stated the church did not have any long range plans but were committed to working with its neighbors, and she presented a proposed development condition to emphasize the commitment to the community. Ms. Strobel discussed the playground and presented photographs to the Board. She also said the applicant requested a deletion of the requirement to provide a 6 foot board on board fence proposed by the staff in Proposed Development Condition #10. Ms. Strobel concluded by thanking Mr. Hunter and Ms. Kelsey for working with them on the application.

In response to Mr. Kelley's question, Ms. Strobel replied that she did not have a problem with Condition #13. She pointed out there would be no additional clearing or grading associated with this application, as stated in Condition #12.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Bruce Verner, 2978 Franklin Oaks Drive, Vice President of the Board of Fairfax Unitarian Church, discussed the long range planning process and stated they currently had no long range plans for expansion of the church.

Lance Gilbert, 322 Canterwood Lane, Great Falls, Virginia, Administrator of Hunter Mill Montessori School, stated they had never received any complaints and the school was an asset to the community.

Bill Poulas, 10310 Greenwood Place, Board of Oakcrest Farms Homeowners' Association, presented a support letter from the residents of Oakcrest Farms signed by 16 adults. He stated the church was a good neighbor.

Neal Blue, 10306 Greenwood Place, said the church and the school were good neighbors.

Chairman DiGiulian asked if there was anyone to speak in opposition of the application.

Mark Dombroff, President, Hickory Forest Drive Homeowners' Association, stated the school was a commercial operation. He proposed that the church return in one year with an approved and agreed upon plan. He discussed the numerous times the church had come before the Board previously, and stated the parking lot was an eyesore.

Ms. Strobel stated in rebuttal, the playground would not be adjacent to the property line, that it would be set back 110 feet.

Mr. Ribble asked for an explanation of the Memorial Grove. Ms. Strobel stated it was a cleared area with a slate walkway containing several benches, trees and a low wall feature.

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

Mr. Pammel noted when the case was heard earlier in the year, the Board discussed the lack of planning and had not receive a response. He stated from looking at the plat everything seemed to have been done on an "as needed" basis without any approval from the Board or any other party in the County. Mr. Pammel questioned Ms. Strobel as to the need for additional parking spaces.

Ms. Strobel replied that the church sanctuary seats 300 individuals and the church felt 165 parking spaces was more appropriate. She stated there was a master plan created in 1960, and it was shared with the community at a meeting held in the sanctuary.

Mr. Pammel stated that the Board had not taken part in the master plan and the Memorial Grove had not come before the Board for approval, but is now shown on the plat. He moved to grant SPA 83-P-053-2 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions as amended, contained in the staff report dated August 1, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-P-053-2 by FAIRFAX UNITARIAN CHURCH, under Section 3-103 of the Zoning Ordinance to permit private school of general education, child care center and change in development conditions, on property located at 2709 Hunter Mill Road, Tax Map Reference 37-4((1))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 10.57 acres.
4. The memorial rock never came before this Board although this Board has approved such exterior facilities in another church. There is no problem with the school and child care center and these should be approved.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Paciulli, Simmons & Associates, LTD dated February 21, 1994, sheet 1 of 1, revised through July 24, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity of the sanctuary shall be limited to three hundred (300) seats.
6. There shall be a maximum of one hundred and sixty-five (165) parking spaces provided as shown on the Special Permit Plat. Wheel stops shall be provided to designate all parking spaces. All parking shall be on site.
7. The combined total maximum daily enrollment of the school and child care center shall be forty (40) children.
8. The hours of operation for the school of general education and the child care center shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.
9. The maximum number of employees for the school of general education and the child care center shall be four (4).
10. The existing vegetation shall satisfy the transitional screening requirement along the northern, eastern and western property lines. A six foot board on board fence shall be provided along the northwest property line adjacent to Lot 4, in the vicinity of the play area. The barrier requirement shall be waived along all other lot lines.
11. Interior parking lot landscaping shall be maintained in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.
12. Right-of-way to 46 feet from the centerline of Hunter Mill Road necessary for future road improvements, including right and left turn deceleration lanes, shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary easements shall be provided to facilitate these improvements.
13. Any existing or proposed lighting of the parking lot and driveways shall be in accordance with the following:

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

The lights shall be a low-intensity design which focuses the light directly onto the subject property.

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

14. Signs shall be permitted in accordance with Article 12, signs.

These conditions incorporate and supersede all previous conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless the use has been legally established and a Non-Residential Use Permit has been issued. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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The meeting recessed at 10:40 a.m. and reconvened at 10:45 a.m.

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Page 41, August 1, 1995, (Tape 1&2), Scheduled case of:

9:30 A.M. SEVEN CORNERS ANIMAL HOSPITAL, VC 95-M-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 41.23 ft. from street line of a corner lot, 3.5 ft. and 8.0 ft. from other street line of a corner lot and parking spaces to remain less than 10.0 ft. from front lot line. Located at 6300 Arlington Blvd. on approx. 8,298 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 51-3 ((1)) 37.

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

Susan Langdon, Staff Coordinator, presented the staff report stating the 8,298 square foot property is located on Arlington Boulevard in the Mason District. The subject property is zoned C-8, HC and SC and developed with an animal hospital. The lots to the east and west are zoned C-7 and contain commercial retail uses. To the south, the lot is zoned C-8 and developed with an office use, and to the north is property within the Falls Church City limits developed with commercial retail uses.

The application involved three variance requests. The first was a request for an addition to enclose existing dog runs to be located 3.5 feet from a street line of a corner lot. The addition will consist of 1,080 square feet on the first floor and a second story consisting of 315 square feet which will contain a doctor's office, laboratory and hospital uses. The second request was for an addition to enclose an existing stairway to be located 8.0 feet from a street line of a corner lot and the third request was to permit parking spaces to be located 0.0 feet from a front lot line. A front yard of 40 feet was required for the additions and a front yard of 10 feet was required for the parking spaces.

Page 42, August 1, 1995, (Tape 1&2), SEVEN CORNERS ANIMAL HOSPITAL, VC 95-M-066, continued from Page 41)

Therefore, the applicant requested a variance of 36.5 feet for the addition to enclose the dog runs, a variance of 32.0 feet for the addition to enclose the stairway and a variance of 10 feet for the parking spaces.

Ms. Strobel, with the law firm Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., said the property had been used as an animal hospital since 1968. She suggested revising Proposed Development Condition #1 to say "it is understood that the proposed second story addition of 315 square feet could be modified as to an exact location at the time of building design". She stated the enclosure would result in minimizing the noise impacts on adjacent properties. She noted the approval would result in a better working environment, more storage space, and better conditions for the animal serviced on the site. She also stated letters in support of the application, had been received from the adjacent neighbors.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Dr. Richard Walsh, owner, said he has owned the property for 10 years and the goal of the application was to get the employees and animals out of the weather. He also presented photographs of the property to the Board.

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

Mr. Ribble moved to grant VC 95-M-066 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-066 by SEVEN CORNERS ANIMAL HOSPITAL, under Section 18-401 of the Zoning Ordinance to permit construction of additions 3.5 feet and 8.0 feet from street line of a corner lot and parking spaces to remain less than 10.0 feet from front lot line, on property located at 6300 Arlington Boulevard, Tax Map Reference 51-3((1))37, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is C-8, HC and SC.
3. The area of the lot is 8,298 square feet.
4. The applicant has satisfied the conditions for the variance; in particular, they cite the various dedications over a period of time of 50 years where Route 7 and Route 50 intersect causing the need for this variance.

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

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

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

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

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

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

- 1. This variance is approved for the location and the specific additions shown on the plat prepared by Dewberry & Davis, dated April 20, 1995, submitted with this application and is not transferable to other land. It is understood that the proposed second story addition of 315 square feet can be modified as to location at the time of building permit submission.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The additions shall be architecturally compatible with the existing building.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. PANAGIOTIS A. KATOUNAS, SP 95-M-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 5.5 ft. from side lot line and accessory structure to remain 0.0 ft. from rear lot line. Located at 6115 Vista Dr. on approx. 12,348 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((15)) 55A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Panagiotis A. Katounas, 6115 Vista Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 12,348 square foot property is located on Vista Drive in the Mason District. The subject property and surrounding lots are zoned R-3 and developed with single family detached dwellings.

The request for a special permit resulted from an error in building location to allow a 4.2 foot high deck to remain 5.5 feet from a side lot line and to allow an accessory storage structure to remain 0.0 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 12 feet and a minimum rear yard for the storage structure of 12.8 feet. Therefore, the applicant requested approval of a reduction to the minimum yard requirement of 6.5 feet for the deck and 12.8 feet for the storage structure.

In response to Mr. Dively's question pertaining to the length of time the shed had been there, Ms. Langdon replied the applicant was currently building it.

Mr. Katounas stated he was in the process of building a fence and did not know a permit was needed and ceased building in order to obtain the permit.

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

Mr. Kelley moved to grant in part SP 95-M-038 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-038 by PANAGIOTIS A. KATOUNAS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 5.5 feet from side lot line and accessory structure to remain 0.0 feet from rear lot line **(THE BZA APPROVED THE DECK ONLY)**, on property located at 6115 Vista Drive, Tax Map Reference 61-2((15))55A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the

result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is approved for the location and the specified deck shown on the plat submitted with this application and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated February 28, 1995, revised through May 9, 1995, submitted with this application, as qualified by these development conditions.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. VICKI CARAYIANNIS, SP 95-Y-018 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 12.0 ft. from side lot line. Located at 15334 Jordans Journey Dr. on approx. 13,380 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 14. (MOVED FROM 6/27 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vicki Carayiannis, 15334 Jordans Journey Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 13,380 square foot property is located on Jordans Journey Drive in the Westport Subdivision. The subject property and lots to the south, east and west are zoned RC and WSPOD and are developed with single family detached dwellings. To the north is homeowner association open space, also zoned RC and WSPOD.

The applicant requested approval of a special permit for modification to minimum yard requirements in the R-C District to allow construction of a screened porch to be located 12.0 feet from a side lot line. The Zoning Ordinance requires a minimum 20.0 foot side yard in the R-C District. Therefore, a modification of 8.0 feet was requested. The property was previously zoned R-2, and developed under the cluster provisions of the Zoning Ordinance, which required a minimum side yard requirement of 8.0 feet with a total side yard of 24.0 feet which the proposed addition met.

Ms. Carayiannis stated the existing deck was constructed 7 years ago and the proposal was to enclose the deck with a screened porch. She said the Virginia Run Homeowner's Association approved the application and it would be in harmony with the neighborhood.

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

Mr. Dively moved to grant SP 95-Y-018 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-018 by VICKI CARAYIANNIS, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 12.0 feet from side lot line, on property located at 15334 Jordans Journey Drive, Tax Map Reference 53-4((8))14, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicant is the owner of the land
2. The present zoning is R-C and WS.
3. The area of the lot is 13,380 square feet.
4. The variance request is minimal.
5. There are no new encroachments to the side yard.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-913 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.

- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat certified by Greenhome & O'Mara, Inc., dated December 21, 1987, revised by Vicki J. Carayiannis, dated March 6, 1995, submitted with this application and not transferable to other land.
- 3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 4. The addition shall be architecturally compatible with the existing dwelling.

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 47, August 1, 1995, (Tape 2), Scheduled case of:

9:30 A.M. VULCAN MATERIALS COMPANY, SPA 82-V-091-3 and SPR 82-V-091-2 Appls. under Sect(s). 3-103 of the Zoning Ordinance to amend and renew SP 82-V-091 for stone quarrying, crushing, sales and associated quarrying activities to permit building addition and renew term. Located approx. 2,500 ft. W. of Route 123, S. of Peniwill Dr., E. of Elkhorn Run and N. of the Occoquan River on approx. 298.50 ac. of land zoned R-1, R-C, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) pt. 4B; 106-4 ((1)) pt. 54; 112-2 ((1)) pt. 8, pt. 9, 11, 12 and 13. (MOVED FROM 6/22)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael J. Giguere, Agent, 8280 Greensboro Drive Suite 900, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 298.5 acre property is located between Ox Road, Peniwill Drive and the Occoquan River in the Lorton area. The site is zoned R-1, R-C, I-6 and is located within a Natural Resource Overlay District. The site is presently developed with a stone quarry. To the north is vacant land zoned R-1. To the south is the Occoquan River. To the east is land zoned R-1 and R-C, part of which is vacant, part developed with the Lorton Prison and part belongs to the Fairfax County Water Authority. To the west is land zoned R-1 that is vacant or developed with single family detached dwellings.

The applicant, Vulcan Materials Company, requested approval of a Special Permit Amendment for a building addition and a Special Permit Renewal to continue quarrying operations, stone crushing, stone sales and accessory uses at the existing Quarry. The proposed building addition is a security tower, 22 feet wide by 26 feet long and 20 feet in height. It is to be located adjacent to the existing one-story office building. The existing office building and proposed tower are located at the northwestern terminus of the existing paved quarry access road. The tower would be constructed of materials that are compatible with existing structures on site and will not be visible from adjacent properties. Additionally, while the five year period governing the current approval has not lapsed, the applicant requested that the application serve as a renewal application

and that a new five year term begin on the date of the approval of the amendment. No other construction or changes to the operation were requested.

Staff concluded that with the implementation of the Proposed Development Conditions, the proposed use was in harmony with the recommendations of the Comprehensive Plan, and would satisfy all the General Standards and Standards for all Group 1 Uses. For these reasons, staff recommended approval subject to the adoption of the Proposed Development Conditions, dated July 25, 1995.

Ms. Langdon stated one revision was made to Condition #12, pertaining to the approved acreage under excavation changing from 136 acres to 232 acres.

On July 31, 1995, the Board of Supervisors held a public hearing on a proposed Zoning Ordinance amendment which eliminated the separate application process for the **renewal** of a special permit and special exception, and incorporated the **renewal** application process into the **amendment** application process. This Zoning Ordinance Amendment was approved by the Board of Supervisors, which meant that the Board of Zoning Appeals did not have to take separate action on the Special Permit Renewal application for Vulcan Quarry, and if the Board intended to approve SPA 82-V-091-3, the Board could incorporate the approval of the renewal into the approval of the Special Permit Amendment.

In addition, staff submitted to the Board of Zoning Appeals for consideration, the 1994 Annual Report for Vulcan Quarry.

Ms. Langdon explained that Fairfax County monitors the quarry operation yearly for compliance with the requirements of the Zoning Ordinance, the Public Facilities Manual and all proffers and development conditions that govern the use. Monitoring is performed by personnel from the Zoning Administration Division and the Environment and Development Review Branch of the Office of Comprehensive Planning, the Air Pollution Control Division of the Fairfax County Health Department, and the Public Utilities and Urban Forestry Branches of the Department of Environmental Management.

Based on the analysis of the foregoing personnel, staff believed the use was in compliance with all proffers and development conditions. With the special permit and renewal amendment before the Board, all previous development conditions were to be combined into the Proposed Development Conditions attached with the staff report for SPA 82-V-091-3. Accordingly, staff did not recommend any additional conditions or restrictions to be imposed with the annual report and recommended that the Board of Zoning Appeals accept the annual report.

Mr. Giguere, with the law firm McGuire, Woods, Battle, & Boothe L.L.P., said Vulcan was a good economic source for the County. He continued to discuss some of the history of the quarry and some of its present uses. He said Vulcan had been a good community neighbor.

In response to Mr. Pammel's question, Mr. Giguere said he agreed to the conditions as stated in the staff report.

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

Mr. Pammel moved to grant SPA 82-V-091-3, which included the renewal of SPR 82-V-091-3, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 25, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-091-3 by VULCAN MATERIALS COMPANY, under Section 3-103 of the Zoning Ordinance to amend and renew SP 82-V-091 for stone quarrying, crushing, sales

and associated quarrying activities to permit building addition and renew term, on property located West of Route 123, South of Peniwill Drive, East of Elkhorn Run, North of the Occoquan River, Tax Map Reference 106-3((1))pt. 4B; 106-4((1))pt. 54; 112-2((1))pt. 8, pt. 9, 11, 12, and 13, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1, R-C, I-6, and NR.
3. The area of the lot is 298.50 acres.
4. This Special Permit Amendment automatically incorporates the renewal.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by CTI Consultants, Inc. and Stevenson Engineering Associates, Inc., dated February 19, 1993, revised through February 23, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is granted for a period of five (5) years from the approval date of SPA 82-V-091-3 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.
5. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
6. Prior to the issuance of a Non-Residential Use Permit for the 75.3 acre expansion area, Tax Map 106-3((1)) pt. 4B, the following submissions shall be made to the Department of Environmental Management:

A grading plan shall be submitted for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance. This grading plan shall be engineered so as to preserve existing drainage patterns outside the pit area to the greatest extent possible and shall also reflect phasing of clearing and grading to preserve the existing vegetation and prevent excessive erosion.

A landscape plan shall be submitted to the Urban Forestry Branch, DEM, for review and approval for the area of the property that is outside the limits of clearing and grading as shown on the special permit plat. This landscape plan shall also contain a tree preservation plan reflecting an intent to preserve existing vegetation to the greatest extent possible along the northeastern and eastern lot lines. The proposed berm as shown on the special permit plat along the northeastern lot line shall be relocated as far to the south within the area of the 200 foot buffer area as feasible. A minimum of 100 feet of existing vegetation shall be preserved between the berm and the northeastern lot line. If any of the vegetation within the 100 foot buffer or beyond the limits of clearing for the berm along the eastern lot line is lost during clearing and grading for the berms, replacement vegetation and/or replacement trees shall be provided. The number, species and location of these trees shall be as determined by the Urban Forestry Branch, DEM. This plan shall detail proposed plantings on the berms which are reflected on the approved special permit plat. The density and species of plantings shall be substantially as shown on the special permit plat subject to approval by the Urban Forestry Branch, DEM. All evergreen trees placed on the berm, at a minimum, shall have a planting height of four (4) feet.

7. After removal of overburden from ten (10) acres or more in the expansion area, and prior to the commencement of any stone excavation in the expansion area, a berm shall be constructed in the eastern portion of the expansion area as shown on the special permit plat (southwest of Parcel 23). Prior to excavation of stone from the expansion area of the property, the berm adjacent to and south of Penniwill Drive shall be constructed as shown, except as qualified previously, on the special permit plat (west of Parcel 23). All berms shall have a minimum height of fifteen (15) feet as shown on the special permit plat. The Zoning Administrator, in consultation with DEM, may permit modifications, changes or adjustments to the berm size, height, width, or location if justified by sound engineering, environmental or safety reasons.
8. The EQCs shall be as shown on the special permit plat subject to final delineations at the time of grading plan approval. The boundaries of the EQC shown on the special permit plat may be adjusted subject to the approval of DEM and the Environment and Development Review Branch, OCP, based on factors such as actual field survey, drainage issues, tree or vegetation preservation concerns. The areas denoted as EQCs on the special permit plat shall be permanently marked with orange fencing to ensure grading and earth moving equipment does not disrupt the EQC. There shall be no clearing, grading, or structures in the areas identified as EQCs in the final delineation shown on the approved grading plan.
9. The vegetation preserved in the EQC's and to be provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening. Species and exact location of trees shall be as determined by the Urban Forestry Branch, DEM. The chain link fence surrounding the site shall be deemed to fulfill the barrier requirement.
10. Landscaping and screening shall be provided in accordance with the master reclamation plan submitted with this application subject to the approval of the Urban Forester.
11. The bond of \$2,000 per acre to insure restoration of the property shall be continued for the duration of this operation. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.
12. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 232 acres as is shown on the approved special permit plat.
13. A stormwater management and erosion and sediment control plan shall be prepared and implemented for the expansion area as approved by DEM.
14. The applicant shall coordinate with the Special Projects Branch of the Department of Environmental Management regarding best management practices (BMP) requirements of the Chesapeake Bay Preservation Ordinance. The applicant shall comply with those standards as determined by DEM.

15. Drilling or crushing shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m., Monday through Friday and all blasts shall be adjusted to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately-owned occupied dwellings. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four hours prior to each blast. Work on Sundays shall be confined to repairs on the processing plant, items of equipment and the operation in general.
16. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more than 0.6.
17. The peak over pressure from any blast shall be limited to 0.0092 psi (130dB) at any privately-owned occupied structure not on quarry property.
18. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned structure not on quarry property.
19. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBa in residential areas, or 65 dBa in commercial areas.
20. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines. The applicant shall indicate the location of all explosives magazines to the Zoning Enforcement Branch of the Office of Comprehensive Planning. No magazine shall be stored within the northern expansion area.
21. No blasting, drilling or extraction shall be permitted on the parcel leased from the United States of America and known as Tax Map 112-2((1))13.
22. The crushing equipment may be located at the discretion of the applicant, provided it is located within the pit area and is operated pursuant to these conditions. An adequate dust suppression system shall be provided on the crusher to prevent point source emissions from the crusher, screens, shakers and the various conveyers during all periods of operation including, but not limited to: testing; maintenance; and the actual crushing of extracted materials stone and concrete and/or re-crushing of the same.
23. In the event any new feasible equipment or means of controlling the dust from blasts becomes available to the industry, these shall installed and used.
24. Dust control equipment shall be installed, maintained and operated on all portions of its processing plant so as to adequately control dust.
25. All conveyors shall continue to be covered, if necessary, to meet applicable standards.
26. Paved roads and other paved areas within the confines of the quarry shall be watered and cleaned with heavy duty cleaning equipment to prevent dust or mud from entering the public street.
27. All trucks transporting material excavated from the site to any off site location shall be covered.
28. Vulcan Materials Company, Inc. will take all steps appropriate or as required for deadening sounds of vibrating screens and plant operations during all periods of plant operation.
29. This approval includes the barge loading facilities and the operation thereof located on the north side of the Occoquan River adjacent to the site.

30. Two-way communication equipment shall be provided for use by zoning inspectors while conducting site inspections.
31. The Zoning Administrator, or designated agent, shall be permitted to inspect the premises monthly to determine that the quarry is being operated in compliance with all the foregoing restrictions.
32. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Office of Comprehensive Planning on an annual basis.
33. Prior to the commencement of operations in the expansion area, an additional air quality monitoring station shall be provided by the applicant and installed as necessary and as required by the County Health Department to demonstrate the attainment and maintenance of ambient PM10 and TSP air quality standards.
34. The applicant shall provide the Office of Comprehensive Planning with a record of any complaints or violations related to State and Federal permits for air quality compliance and water quality control.
35. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator. As monitoring equipment is shared between Luckstone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.
36. Penniwill Drive shall only be used for emergency vehicle access.
37. SEA 82-V-046, APAC-Virginia, Inc., lessee of Tax Map 112-2((1)) 12, is not a part of this application and a change in this use or corresponding SEA would not necessarily require a change to this special permit.

It is noted that these development conditions incorporate and supersede all previously imposed conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, the portion of this application which is for renewal of the quarry use shall become valid upon the date of approval by the BZA. The portion of the special permit amendment for the building addition shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction of the building has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 1995. This date shall be deemed to be the final approval date of this special permit.

Mr. Pammel moved that the Board of Zoning Appeals accept the Vulcan Materials Company 1994 Annual Report, it was seconded by Mr. Dively. The motion carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

Page 52, August 1, 1995, (Tape 2), Scheduled case of:

9:30 A.M. BROWNS OF ALEXANDRIA AND DOUGLAS D. JEMAL, APPEAL 95-L-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles in a C-8, R-2 and Highway Corridor Overlay District constitutes a storage yard and is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 6910 Richmond Hwy. on approx. 4.05 ac. of land zoned C-8, R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 1-8; 92-2 ((19)) (6) 1. (DEF. FROM 6/27 AT APP.'S REQ.)

Mr. Dively moved to allow the withdrawal of Appeal 95-L-024 at the applicant's request. It was seconded by Mr. Kelley and the motion carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 52, August 1, 1995, (Tape 2), Action Item:

Approval of July 25, 1995 Resolutions

Mr. Pammel moved to approve the Resolutions as submitted by staff and Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 52, August 1, 1995, (Tape 2), Action Item:

Approval of May 23, 1995 Minutes

Mr. Dively moved to approve the Minutes as submitted by staff, and Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 52, August 1, 1995, (Tape 2), Action Item:

Request for Additional Time
Patrick W. and Josephine H. Arnold, VC 91-V-063

Mr. Kelley moved to approve the Request for Additional Time for VC 91-V-063. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting. The new expiration date is September 11, 1997.

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Page 52, August 1, 1995, (Tape 2), Action Item:

Request for Change in Permittee
The Boyd School, SP 90-C-026

Mr. Dively moved to approve the Request for Change in Permittee for SP 90-C-026, and Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Request for Additional Time
Virginia Run Community Association, SP 89-Y-035

Mr. Dively moved to approve the Request for Additional Time for SP 89-Y-035. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Request for Change in Permittee
Falls Church Children's House of Montessori, Inc., S-204-73

Mr. Pammel moved to approve the Request for Change in Permittee for S-204-73. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

O. Carl and Elizabeth Hering Appeal Request

Mr. Dively moved to accept O. Carl and Elizabeth Hering Appeal and scheduled the public hearing for the morning of October 31, 1995, it was seconded by Mr. Pammel and carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Allan R. Fagan Appeal Request

Mr. Dively moved to defer decision on the acceptance of the Allan R. Fagan Appeal to the morning of September 14, 1995, since the appellant's attorney could not be present to respond to the staff recommendation that the scope of the appeal be limited. It was seconded by Mr. Pammel and carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Yosuf M. and Zarlisht Mir Appeal Request

Mr. Dively moved to accept the Yosuf M. and Zarlisht Mir Appeal and scheduled the public hearing for the morning of October 31, 1995, with the scope of the appeal to be limited as recommended by staff. It was seconded by Mr. Pammel and carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 53, August 1, 1995, (Tape 2), Action Item:

JDA Custom Homes Inc. Appeal Request

Mr. Pammel moved to accept JDA Custom Homes Appeal and scheduled the public hearing for the morning

Page 55, August 1, 1995, (Tape 2), JDA Custom Homes Inc. Appeal Request, continued from Page 54)

of October 3, 1995. It was seconded by Mr. Kelley and the motion carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Out of Turn Hearing Request
Georgine J. Farish

Mr. Kelley moved to deny the Out of Turn Hearing Request for VC 95-B-087 and it was seconded by Mr. Dively. The motion carried by a vote of 4-0, with Mr. Ribble not present for the vote and Mr. Hammack and Mr. McPherson absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Out of Turn Hearing Request
NVR Homes Inc.

Mr. Dively moved to deny the Out of Turn Hearing Request for SP 95-L-051. It was seconded by Mr. Pammel and the motion carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Out of Turn Hearing Request
McLean Presbyterian Church

Mr. Dively moved to deny the Out of Turn Hearing Request for SPA 85-D-034-3, it was seconded by Mr. Pammel and the motion carried by a vote of 4-0. Mr. Ribble was not present for the vote, and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

Request for Reconsideration
Gloria J. Crawford

Mr. Pammel moved to deny the Request for Reconsideration for Gloria J. Crawford, VC 95-S-058 and it was seconded by Mr. Dively. The motion carried by a vote of 4-0. Mr. Ribble was not present for the vote and Mr. Hammack and Mr. McPherson were absent from the meeting.

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Page 54, August 1, 1995, (Tape 2), Action Item:

- Appeal Requests
- Heritage Citgo, November 28, 1995
- Jocelyn West Brittin and Michael D. Brittin, November 9, 1995
- Charlotte A. Heath (concurrent with Brittin), November 9, 1995
- Gregory L. and Sandra M. McKinney, November 9, 1995
- Alfred Garrison/G.F.E. Service Center, November 9, 1995

Paul G. Douglas, November 14, 1995
Kathy Patterson and Larry Patterson, November 21, 1995 (Evening)
Poong Im, November 28, 1995
Harold Dawson/Dawson's Auto Care, November 28, 1995
Darryl A. Gray/PGW, Inc. Sales and Service, December 5, 1995

Mr. Dively moved to accept the ten appeals listed in the memo from William Shoup, Deputy Zoning Administrator, and schedule them for the recommended hearing dates with the exception of the Heritage Citgo appeal which Mr. Shoup now recommended for November 28, 1995. Mr. Pammel seconded the motion which carried by a vote of 4-0, with Mr. Ribble not present for the vote. Mr. Hammack and Mr. McPherson were absent from the meeting.

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A discussion took place between the Board members and Branch Chief, Jane Kelsey, pertaining to the Out of Turn Hearing request process. Ms. Kelsey stated a report would be submitted to the Board to explain the process of an Out of Turn Hearing request.

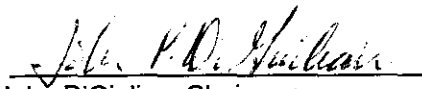
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As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

Minutes by: Regina Thorn

Approved on: October 3, 1995


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 12, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Timothy McPherson; James Pammel; and John Ribble. Robert Kelley was absent from the meeting

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 57, September 12, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HARVEY C. ATKINSON, VC 95-M-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.6 ft. from street line of a corner lot and permit six ft. high fence to remain in front yard. Located at 5000 Laburch Ln. on approx. 22,411 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((9)) 29.

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

Susan Langdon, Staff Coordinator, presented the staff report dated September 5, 1995.

Mr. Atkinson presented the statement of justification previously submitted in writing with the application and incorporated into the record. He submitted a petition in support of the application, which he said had been signed by all neighbors within direct sight of the dwelling.

Charles College, came forward and stated that he resides directly across the street from the applicant and supported the application.

Mr. Hammack moved to grant VC 95-M-069 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-069 by HARVEY C. ATKINSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 29.6 feet from street line of a corner lot and permit six-foot high fence to remain in front yard, on property located at 5000 Laburch Lane, Tax Map Reference 71-3((9))29, Mr. Hammack, moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,411 square feet.
4. The applicant has double front yard requirements, making it difficult to construct the addition in any other location on the lot.
5. Even with the addition, the setbacks from the street are very significant at 29.6 feet.
6. The addition does not really change the character of the zoning district as viewed by the Board.

7. The fence is on the inside of the property and, even though it is a technical violation, it is not on the property line and it surrounds an in ground swimming pool; it does not have any impact or adverse affect upon the community or Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the specific addition and fence shown on the plat prepared by Rice Associates, P.C., dated April 24, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained because he was not present for the hearing. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 59, September 12, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DELMER T. WADE, SP 95-L-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.3 ft. from side lot line. Located at 6420 Japonica St. on approx. 19,813 sq. ft. of land zoned R-1 and HC. Lee District. Tax Map 91-1 ((2)) 23.

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

Susan Langdon, Staff Coordinator, presented the staff report dated September 5, 1995.

Mr. Wade presented the statement of justification previously submitted in writing with the application and incorporated into the record. He stated that he had also included with his application affidavits from neighbors who stated they had no objections to the application.

Mr. Pammel asked if the existing carport would also be enclosed and Mr. Wade said it would not.

Mr. Hammack asked if the owners of Lot 22, immediately adjacent on the side of the proposed addition, had raised any objection. Mr. Wade said they had been one of the neighbors who certified that they had no objection.

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

Mr. Pammel moved to grant SP 95-L-046 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-046 by DELMER T. WADE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.3 feet from side lot line, on property located at 6420 Japonica Street, Tax Map Reference 91-1((2))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards

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for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified garage addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Colburn & Associates, Inc., dated May 5, 1995, submitted with this application, as qualified by these development conditions.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 60, September 12, 1995, (Tape), Scheduled case of:

9:00 A.M. ALDENE G. CLARK, VC 95-M-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 27A having lot width of 12.0 ft. Located at 3801 Glenbrook Rd. on approx. 2.02 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 27.

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

Susan Langdon, Staff Coordinator, presented the staff report dated September 5, 1995. She said that the Zoning Ordinance required a minimum lot width of 150 feet in the R-1 District; therefore, a variance of 138 feet was being requested.

Ms. Clark presented the statement of justification previously submitted in writing with the application and incorporated into the record. She submitted a petition signed by 148 of her neighbors in support of her application.

Mr. McPherson moved for discussion purposes to grant VC 95-M-059 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995. He stated that this was not an easy decision to make.

Mr. Ribble seconded the motion and said he concurred with Mr. McPherson about the difficulty in making this decision. A discussion ensued among all members of the Board and alluded to the age of the subdivision, the history of the subdivision and resubdivision of the lots, the existing pipestems, and the fact that a possible rezoning of the area might be in order.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-059 by ALDENE G. CLARK, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 27A having lot width of 12.0 feet, on property located at 3801 Glenbrook Road, Tax Map Reference 58-4((9))27, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 2.02 acres.

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

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

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

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

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

1. This variance is approved for the subdivision of Lot 27 as shown on the plat prepared by Harold A. Logan, Associates P.C., dated May 1, 1995, revised May 8, 1995. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The applicant shall dedicate in fee simple to the Board of Supervisors 26 feet of right-of-way from the centerline of Glenbrook Road for public street purposes upon request or at time of subdivision review, whichever occurs first. Ancillary easements shall be provided upon request if necessary to facilitate any improvements.
3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
4. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-2. Messrs. Hammack and Pammel voted nay. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JAMES C. ELLENBOGEN, VC 95-D-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.64 ft. from side lot line. Located at 1422 Audmar Dr. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((12)) 110. (MOVED FROM 4/11 AT APPLICANT'S REQUEST)

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

Susan Langdon, Staff Coordinator, presented the staff report, which she said had been prepared by Staff Coordinator Don Heine.

Mr. Ellenbogen presented the statement of justification previously submitted in writing with the application and incorporated into the record. He said he had spoken to all ten neighbors who were noticed and none was opposed to the application. Mr. Ellenbogen also submitted a letter of support from one of his neighbors.

Mr. Ellenbogen introduced his architect, Susan W. Notkins, who interpreted the plans and spoke in favor of the application.

Mr. Pammel said he was looking at the plans contained in the staff report and they did not coincide with the plat. He said there was an entire section in the middle of the house that was shown on the plat but not on the plans. Ms. Notkins said she noted the previous day that this case had been deferred from an earlier date and that the difference in the two was due to the fact that there was an original submission and a later submission. A discussion ensued during which the question was clarified and resolved.

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

Mr. Ribble moved to grant VC 95-D-002 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 4, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-002 by JAMES C. ELLENBOGEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.64 feet from side lot line, on property located at 1422 Audmar Drive, Tax Map Reference 30-1((12))110, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The property is already in a somewhat nonconforming mode and the extension of the carport and enclosure is so slight and, in accordance with the revised plans submitted recently, the Board deemed it appropriate to grant the variance.
5. The proposed location is the only place where the applicant can justifiably add the space.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Susan Woodward Notkins, AIA Associates, dated December 27, 1994, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 65, September 12, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BEVERLY BYER, VC 95-Y-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from rear lot line and deck 3.5 ft. from rear lot line. Located at 5718 Flagler Dr. on approx. 5,040 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6)) (9) 28. (DEF. FROM 6/22 FOR NOTICES.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before was complete and accurate. The applicant's husband, Wayne Byer, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 5, 1995. She said that a variance of 1.5 feet was being requested.

Mr. Byer presented the statement of justification previously submitted in writing with the application and incorporated into the record.

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

Mr. Dively moved to grant VC 95-Y-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Hammack seconded for the purpose of discussion and stated his position against building too close to a property line. He said a 14.5-foot deck would be ample and would require no variance. Mr. Hammack said he would be inclined to oppose the variance for the deck but grant it for the covered porch.

Mr. Pammel said that, had the configuration been shown on the development plan when it was approved with the original zoning, it would have been permitted. He further pointed out that the space behind the property was owned by the homeowners association, causing no impact on adjacent property owners.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-031 by BEVERLY J. BYER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.5 feet from rear lot line and deck 3.5 feet from rear lot line, on property located at 5718 Flagler Drive, Tax Map Reference 53-2((6))(9)28, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-4.
3. The area of the lot is 5,040 square feet.

- 4. The PDH District zoning cases are rather odd and the applicant had an excellent point when he stated that additions may be allowed at the time of purchase; however, if one cannot afford to add on at that time and wish to do so two years later, the changed zoning will not permit it.
- 5. If everyone else in the neighborhood has made the addition, it clearly is in harmony with the neighborhood.
- 6. The topography at the rear of the lot justifies the addition and it abuts open space so it will not impinge upon another property owner.

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

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

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

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

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

- 1. This variance is approved for the location of the specific additions shown on the plat prepared by Land Design Consultants, dated February, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 4-1. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN LEFEVERE, VC 95-H-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure (basketball standard) to remain 4.4 ft. from a front line. Located at 12457 Wendell Holmes Rd. on approx. 17,562 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-4 ((8)) 33.

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

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 5, 1995. She noted that this was the subject of an appeal application which was deferred in order to allow the appellants to file the variance application.

Mr. Lefevere stated that the appeal was due to be heard on September 26; he assumed that his position on the appeal was correct and he was not waiving any of his rights under the appeal; however, for the sake of argument, he would assume that the variance was necessary. He highlighted the major points presented in the statement of justification previously submitted in writing with the application and incorporated into the record.

Mr. Hammack asked staff to explain why the portion of the yard in question was considered a front yard. Ms. Kelsey said the reason was that the lot has frontage on a street that serves abutting lots, according to the Zoning Ordinance.

The following people spoke in opposition to the application: Carol Ann Rybicki, 12459 Wendell Holmes Road, Lot 35; Gus Slayton, Elkwood Road, Chantilly, Virginia, real estate and financial consultant to Ms. Rybicki.

Concerns of the speakers in opposition were: a hazardous condition and aesthetic distraction would be created for the two properties located at the rear of the pipestem, thereby adversely impacting the property values; the installation of a permanently cemented base structure was accomplished without application review or approval required by the covenants of the association; the structure constituted a violation of the Zoning Ordinance; icy winter conditions and storm drainage problems; invasion of privacy. Photographs were submitted to the Board.

Mr. Lefevere came forward for rebuttal testimony, stating that he had misunderstood the side yard versus front yard situation. He said the association did not strictly enforce this aspect. Mr. Lefevere said that modifying the design would require taking down a large tree and he challenged Mr. Slayton's interest because he is not a property owner in the neighborhood. Mr. Lefevere said the other property owners on the pipestem supported their position.

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

Mr. Hammack moved to deny VC 95-H-070 for the reasons set forth in the Resolution.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-070 by JOHN LEFEVERE, under Section 18-401 of the Zoning Ordinance to permit accessory structure (basketball standard) to remain 4.4 feet from a front lot line, on property located at 12457 Wendell Holmes Road, Tax Map Reference 25-4((8))33, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,562 square feet.
4. While the basketball standard appears to be in a side yard, under the Zoning Ordinance it is actually in a front yard.
5. There is a safety factor associated with having the standard so close to the right-of-way, although that is not a standard which the Board was required to consider in making a decision on this type of an application.
6. In the final analysis, the addition was as much of a visual detriment to the pipestem as it was a safety hazard, and was a standard that the Board could consider to some extent.
7. The Board believed that the applicant made a mistake in the placement of the standard and that it was proposed for a location too close to pipestem.
8. The Board believed that the applicant could construct the standard in compliance with the Code.
9. It was considered unfortunate that the applicant had erected the standard in a concrete base because moving it would be a bigger problem.

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

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

- confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995.

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Page 69 September 12, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CALVARY ROAD BAPTIST CHURCH, SPA 84-L-071-4 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SE 85-L-001 and SP 84-L-071 for church and related facilities, nursery school, child care center and school of general education to permit church and related facilities, nursery school, child care center and private school of general education with enrollment of 100 or more students daily, student ministry center and change in development conditions. Located at 6811 Beulah St. on approx. 6.23 ac. of land zoned R-3. Lee District. Tax Map 91-1 ((1)) 61.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant's agent, Arlene Pripeton, Esquire, 10195 Main Street, Fairfax, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 5, 1995.

Ms. Pripeton presented the statement of justification previously submitted in writing with the application and incorporated into the record. She referenced Proposed Development Condition 9 regarding the play area and stated that they had received a fax of a letter from Fairfax County Park Authority stating that the park is available for use during daylight hours, which she submitted to staff. Ms. Pripeton clarified that the current extension time for the use of the trailers would expire in November 1997 and they were requesting a five-year extension beyond that expiration date, which would change Proposed Development Condition 16 to extend the time of expiration to the year 2002. Regarding Proposed Development Condition 20, she said staff had asked that a residential use permit not be issued until the applicant had received approval for the design of the class rooms in the garage area. She asked that the limitation be applied only to the use of the garage and that they be allowed to proceed with all other aspects of the application, including the increase in enrollment. Ms. Pripeton's presentation further covered projections of the traffic pattern and car pooling. She said they had a major problem with Condition 17, which had not been discussed with the applicant prior to receipt of the staff report, relevant to providing anything that is requested by the Office of Transportation for the widening of Beulah Street; she spent some time explaining the history of the dedication of land and requested that the condition be deleted.

Mr. Pammel asked Ms. Pripeton, regarding the garage and maintenance, where the bus would now be maintained. Ms. Pripeton said that, when on site, the bus was always parked right in front of the garage; it

only picks up children on Sunday mornings. She clarified that the bus was not serviced on site and that the garage was used only for the storage of junk.

Mr. Hammack asked Ms. Pripeton if she had discussed the use of the garage with the neighbor immediately adjacent to the applicant. Ms. Pripeton said the occupant was now deceased and they were negotiating in an attempt to purchase the property. She said a representative of the Association was present to discuss its abutting property and that he had requested construction of a board-on-board fence behind the playground. Ms. Pripeton said there had been previous negotiations between the Manchester Homeowners Association, the Park Authority and the applicant, regarding the planting of trees and that the applicant was willing to continue working along those lines.

Mr. Hammack asked Ms. Pripeton if they had any objections to the limitations in Condition 22 and she said they did not.

Mr. Hammack asked why the temporary trailers could not be removed before 2002. Ms. Pripeton said their goal was to have them out before that time; however, she felt more comfortable with the cushion ensuring that they would not have to return before the Board to request another extension.

Patrick Mazey came forward to represent the Surrey Condominium Homeowners Association and said he wished to voice a caveat or condition to the application in conjunction with the fiduciary responsibilities between his Association and Manchester Lakes Homeowners Association relating to the planting of trees, the installation of a board-on-board six-foot high pressure treated fence, etc., for the purpose of noise attenuation.

Mr. Hammack noted that the development plan submitted already showed a six-foot high fence on the property line. He said the plantings shown on the development plan appeared to be fairly dense. Ms. Kelsey said she believed the wood fence stopped and a chain link fence picked up at a certain point; she said the photographs depicted the situation clearly. A discussion ensued.

Ms. Pripeton said the applicant preferred to plant trees and split the cost with the Association, as agreed at the time of their previous application.

Mr. Hammack asked if the 20-foot outlet road easement was still there and Ms. Pripeton said there was one from Charles Arrington Drive to the County Park. A discussion ensued. Ms. Pripeton said it was her understanding that the Manchester Lakes Homeowners Association wanted the fence located behind the playground at the back of the property, next to the road that goes into the County Park.

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

Mr. Pammel moved to grant SPA 84-L-071-4 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report, as amended and reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-L-071-4 by CALVARY ROAD BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to amend SE 85-L-001 and SP 84-L-071 for church and related facilities, nursery school, child care center and school of general education to permit church and related facilities, nursery school, child care center and private school of general education with enrollment of 100 or more students daily, student ministry center and change in development conditions, on property located at 6811 Beulah Road, Tax Map Reference 91-1((1))61, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 6.23 acres.
4. It was deemed appropriate to modify Development Conditions 13, 16, and 20; Proposed Development Condition 17 was deleted and the following Development Conditions were renumbered as appropriate; Development Condition 22 was added.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-305, 8-309 and 8-310 of the Zoning Ordinance.

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

- *1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Rinker-Detwiler & Associates, P.C. dated May 23, 1985, revised through March 17, 1995 and approved with this application, as qualified by these development conditions.
- *3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- *4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director of the Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- *5. The maximum number of seats in the sanctuary shall be 702.
6. Upon issuance of a Non-Residential Use Permit for SPA 84-L-071-4, the number of children enrolled in the nursery school and child care center shall be limited to a maximum of 99 children daily and the private school of general education shall be limited to a maximum of 251 students daily. The maximum daily enrollment during the summer months shall also be a total of 350. Until such time, the maximum daily enrollment shall be 240.
- *7. The maximum hours of operation for the nursery school, child care center and the private school of general education shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday. Weekend and evening use of the facilities shall be permitted for extra-curricular activities.
- *8. The number of students using the outdoor recreation area at any one time shall not exceed the square foot requirements for recreation areas stipulated by Zoning Ordinance Sects. 9-309 and

9-310 which require 100 square feet per child care center student; 200 square feet per student in grades Kindergarten through 3, and 430 square feet per student in grades 4 through 12.

9. Upon issuance of a Non-Residential Use Permit for SPA 84-L-071-4, the applicant shall provide documentation from the Park Authority to allow the school's use of the adjacent public park for daily outdoor recreation for grades 4 through 12 in the form of an existing letter received from the Park Authority to that affect. If the private school of general education cannot use the park property for daily outdoor recreational space for grades 4 through 12, then adequate on-site outdoor recreational space shall be provided. At a minimum, this shall include a basketball standard and the volleyball court located on the south side of the church building.
- *10. Indoor recreation space shall be provided in accordance with the provisions of Chapter 30 of the Code.
- *11. A row of evergreens, six (6) feet original planted height, shall be maintained around the perimeter of the trailers. A smaller variety of evergreens may be planted in front of the windows to screen the base of the trailers. The type and placement of these trees shall be coordinated with the Urban Forestry Branch, DEM.
12. Transitional screening 1 shall be provided to screen the use from adjacent properties in all areas except as follows:
 - *Along the parking area abutting the private street in the Manchester Lakes subdivision where a six (6) foot stockade fence has been erected, a ten (10) foot screening yard shall be planted in accordance with Transitional Screening 1, as pro-rated to the ten-foot wide area.
 - *Along the existing driveways and parking areas to the northeast and south of the church, as shown on the plat, the existing plantings shall be supplemented with plants of a type and amount to be determined by the Director, DEM. A 25 foot screening area shall be provided to the north of the existing outlet easement as shown on the plat with plantings of a type and amount to be determined by the Director, DEM.
 - *Along the entire frontage of Beulah Street from the southernmost lot line to the corner of the cemetery, at least a ten (10) foot wide screening yard shall be maintained. The type and amount of plantings within this yard shall be determined by the Fairfax County Urban Forestry Branch. This ten (10) foot screening yard shall be measured from the lot line formed after dedication and vacation, and shall extend along the entire frontage of the site to the cemetery. If, after dedication and vacation, there is in excess of ten (10) feet between the parking area and the new lot line, this area shall be included in the landscape plan.

Adjacent to the existing garage, there shall be plantings equivalent to Transitional Screening 1 within a twenty (20) foot wide planting area along the southern lot line and within a nineteen (19) foot wide planting area along the western lot line as approved by the Director, DEM.
- *13. Except for the fencing shown on the plat, the barrier requirement shall be waived provided the play area is fenced with board-on-board fencing up to the existing wooden fencing.
- *14. The southernmost entrance on Beulah Street shall be used for exiting traffic only and appropriate signs shall be installed in appropriate locations to advise parishioners of this limitation.
15. Two (2) of the existing three (3) temporary trailers may be enlarged in size as shown on the plat. The three (3) temporary trailers may be replaced with (3) trailers of identical size as the existing trailers without a Special Permit Amendment. If the existing temporary trailers are replaced, any landscaping around the trailers that is destroyed shall be replaced.
16. The three temporary trailers shall be removed by November 1, 2002.

- 17. The applicant shall provide an off-duty police officer to be stationed at the site on Beulah Street on Sunday mornings from 9:30 a.m. to 12:30 p.m. to direct traffic and to facilitate left turn vehicular movements into and from the site.
- 18. Upon the issuance of a Non-Residential Use Permit for SPA 84-L-071-4, the applicant shall institute and maintain a car/van pool program which includes forty (40) percent of the children enrolled in the nursery school, child care center and private school of general education or which maintains an average of 2.5 children per vehicle.
- *19. Interior parking lot landscaping shall be provided as required by Sect. 13-201 of the Zoning Ordinance and as determined by the Department of Environmental Management.
- 20. Prior to the issuance of the Non-Residential Use Permit (NONRUP) for SPA 84-L-071-4 for all uses pertaining to this application, the garage may be under a separate NONRUP to be issued at such time as the building is ready for occupancy and meets all County requirements; all permits required by the Director of DEM for the use of the garage as classrooms and meeting rooms shall be obtained and have final inspections approved.
- 21. The use of the garage shall be limited to the number of people approved by the Fire Marshal, but no more than seventy-five (75) young people at any one time. The church may use the building for classrooms from 9:45 a.m. to noon and from 6:00 p.m. to 8:00 p.m. on Sundays and from 7:00 p.m. to 9:00 p.m. on Wednesdays; the student ministry center may use the building no more than twice a month on either Friday or Saturday night from 5:00 p.m. to midnight for supervised social activities; and the private school of general education may use the building for classrooms Monday through Friday from 8:00 a.m. to 3:00 p.m.
- 22. The Board has no objection to the continuance of the waiver of dustless surface requirement.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. SLEEPY HOLLOW PRESCHOOL, INC. & ST. ALBAN'S EPISCOPAL CHURCH, SPA 81-M-008-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend and renew SP 81-M-008 for church and related facilities and nursery school to permit renewal of term and

modify development conditions. Located at 6800 Columbia Pi. on approx. 6.00 ac. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((1)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant's agent, Sara Hall, Esquire, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report dated September 5, 1995, and stated that it had been prepared by Staff Coordinator Lori Greenlief. She said that a representative from the Urban Forestry Branch was present to answer any questions the Board might have concerning screening of the site.

Ms. Hall presented the statement of justification previously submitted in writing with the application and incorporated into the record. She referenced Condition 9 and said that it specified the western lot line and, instead, should have specified the eastern lot line. Ms. Hall said the gentleman from the Urban Forestry Branch agreed. She referenced Appendix 6, the letter of June 14, 1991 from Jessica Struther, in which #2 referenced three white pines west of the sanctuary and the north end of the of the circular asphalt driveway, which instead should have referenced the eastern lot line.

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

Mr. McPherson moved to grant SPA 81-M-008-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995, as amended and reflected in the Resolution, according to the corrections noted by Ms. Hall.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-M-008-2 by SLEEPY HOLLOW PRESCHOOL, INC., & ST. ALBANS EPISCOPAL CHURCH, under Section 3-203 of the Zoning Ordinance to amend and renew SP 81-M-009 for church and related facilities and nursery school to permit renewal of term and modify development conditions, on property located at 6800 Columbia Pike, Tax Map Reference 60-4((1))10, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 6.0 acres.
4. There is no real increase in intensity for this use.
5. Some transitional screening issues exist, which will be resolved.
6. Development Condition 9 was modified: first bullet, first line, change "the western lot line" to "the eastern lot line."

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

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

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

1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Jarrett Surveys, Inc., dated May 23, 1989, revised through April 14, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. The maximum seating capacity for the sanctuary shall be limited to a total of 252.*
5. Ninety-five (95) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on site.
6. Hours of operation for the nursery school shall be limited to 8:00 a.m. to 3:45 p.m., Monday through Friday.*
7. The maximum daily enrollment for the nursery school shall be 99 students.
8. The existing vegetation along all lot lines shall be deemed to satisfy Transitional Screening 1 requirements along all lot lines with the exception of the following:
 - An additional white pine shall be planted along the eastern lot line to supplement existing vegetation between the existing white pines and the parking lot in order to screen the parking lot from adjacent residences. The size and location shall be approved by the Urban Forestry Branch, DEM.
9. The existing fencing shall be deemed to satisfy the barrier requirements.

The above development conditions supersede those imposed in conjunction with previous approvals on this property.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 26, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, SP 95-M-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities. Located at 3206 Glenn Carlyn Rd. on approx. 2.25 ac. of land zoned R-3. Mason District. Tax Map 51-4 ((8)) A; 61-2 ((5)) 3 & 4.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the notices were not in order and she did not know exactly what date to request that the deferral be set for since the report had been assigned to Don Heine, Staff Coordinator, who was not present. The applicant also was not present. Ms. Kelsey suggested the night meeting of November 21, 1995 and, under the circumstances, Mr. Pammel so moved with the concurrence of the other Board members. Mr. Ribble was not present for the vote. Mr. Kelley was absent from the meeting. Chairman DiGiulian asked Ms. Kelsey to notify the applicant of the new hearing date.

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Page 26, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. LOUIS V. GENUARIO, SR., GENUARIO CONSTRUCTION CO., INC., Appeal 94-V-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a part of the dwelling unit located on the R-2 portion of the appellant's property has been converted into an office use in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8400 Radford Ave. on approx. 24,724 sq. ft. of land zoned R-2, C-8 and HC. Mt. Vernon District. Tax Map 101-3 ((3)) 1 and pt. 2. (DEF. FROM 1/3/95. DEF. FROM 3/7 TO ALLOW APPELLANT TIME TO REZONE AND SUBDIVIDE. NOTICES NOT IN ORDER.)

Mr. Ribble asked staff if the Board had made an Intent to Defer in July. William E. Shoup, Deputy Zoning Administrator, advised that the Board had moved to defer the hearing to that day to allow the appellant sufficient time to pursue a rezoning which might resolve the issue. He said the application had been filed; however, the appellant had requested a plat waiver which had been denied and the appellant was requesting more time to work it out. Mr. Shoup said staff had advised him that the appellant had recently made another submission. Mr. Ribble asked Mr. Shoup for his recommendation on a deferral date. Mr. Shoup recommended April 2, 1996 and the Board so moved. Mr. Kelley was absent from the meeting.

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Page 76, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. ROBERT E. MCKIM AND ALMA S. MCKIM, APPEAL 95-S-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the violation of the outside storage limitations cited in a January 22, 1992 Notice of Violation recurred and/or continued as of the March 16, 1995 Notice of Violation. Located at 10001-A Hampton Hunt Rd. on approx. 8.47 ac. of land zoned R-C. Springfield District. Tax Map 105-2 ((1)) 9A.

Chairman DiGiulian stated that it was his understanding that the notices were not in order. William E. Shoup, Deputy Zoning Administrator, said that was true; the appellant did not pick up the notification package. He recommended deferral to October 31, 1995; however, because of past experience with activities on this property and lack of cooperation, staff was proposing to prepare the notices for the hearing in order to avoid further delay. Chairman DiGiulian said he believed that was a good idea and that the appellant should be notified that the appellant's failure to appear at the scheduled time would result in dismissal for lack of interest. Mr. Pammel commented on the fact that the Notice of Violation was dated 1992, three and one-half years ago. Mr. Shoup said there was a Notice issued in 1992 and in 1995 staff issued a follow-up notice which is what was appealed. He said that when the 1995 appeal came before the BZA for acceptance, they limited the scope of the appeal to the fact that the violation was continuing. Mr. Pammel moved to defer to October 31, 1995, with the understanding that staff would prepare the notices and, if the appellant failed to appear at the hearing, the matter would be disposed of in the appropriate manner. The other Board members concurred. Mr. Ribble was not present for the vote. Mr. Kelley was absent from the meeting.

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77

Page 77, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. DAVID L. RICKETTS, APPEAL 95-H-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that construction of a garage addition is not in compliance with the approval of VC 94-H-017 and is therefore in violation of Zoning Ordinance provisions. Located at 9911 Corsica St. on approx. 12,379 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((22)) 84. (RESCHEDULED FROM 5/2 AT APP.'S REQ.) (W.D. REQUESTED REC. 8/1)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the appeal had been withdrawn.

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Page 77, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL. DEF. FROM 2/28. DEF. FROM 4/27 IN ORDER TO HEAR CONCURRENTLY WITH A 94-H-041, A RELATED CASE. DEFERRED FROM 5/23 FOR DECISION ONLY. DEF. FROM 6/27)

The applicant's agent, Jerry Emrich for Lynn Strobel of Walsh, Colucci, Stackhouse, et al., said that the ADU Advisory Board (ADUAB) had considered this matter and the result was a satisfactory resolution. He said the appellant intended to withdraw the application if there was no appeal to the Circuit Court, which they did not expect, during the 30-day appeal period following the ADUAB meeting. They had not been able to verify that an appeal had not been filed; therefore, the appellant was requesting a deferral of one week. If, in fact, no appeal was filed by that time, the appellant would withdraw the appeal. Mr. Hammack so moved. The other Board members concurred. Mr. Ribble was not present for the vote. Mr. Kelley was absent from the meeting.

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Page 77, September 12, 1995, (Tape 2), Scheduled case of:

9:30 A.M. POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, SP 95-M-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities. Located at 3206 Glenn Carlyn Rd. on approx. 2.25 ac. of land zoned R-3. Mason District. Tax Map 51-4 ((8)) A; 61-2 ((5)) 3 & 4.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that there were members of the audience who wished to address the deferral date of this case.

Betty Merkfallati, 6015 Lebanon Drive, Falls Church, Virginia, said that they had not been contacted about this application and everyone in the neighborhood was opposed to the church because of traffic, there are already three churches on the street, and the Mosque at 7 Corners was nearby and was always backed up with traffic. Mr. Hammack asked Ms. Merkfallati to address the deferral date and she said they would like at least two months to prepare. Chairman DiGiulian suggested the week before Thanksgiving and she concurred. The Board concurred and the hearing date was set for 9:30 a.m. on November 14, 1995.

Mr. Pammel requested of staff, because of the comments of Ms. Merkfallati, that the staff report be referred back to the Office of Transportation staff for a full analysis of the carrying capacity of the streets involved. He said that, if there are already three existing churches at that location, plus the traffic from

Page 78, September 12, 1995, (Tape 2), POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, SP 95-M-034, continued from Page 77)

Arlington County, he believed the Board needed to know what impact an additional facility of this magnitude would have.

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Page 78, September 12, 1995, (Tape 2), Scheduled case of:

10:00 A.M. COUNTRY DEVELOPERS, INC., APPEAL 95-H-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected an off-site real estate directional sign which exceeds 3 sq. ft. in area and 4 ft. in height in violation of Zoning Ordinance provisions. Located at 1505 Victoria Farms Ln. on approx. 2.06 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((9)) 15.

William E. Shoup, Deputy Zoning Administrator, said there was someone present who would like to address this appeal.

Ron Stanton, 10309 Browns Mill Road, Vienna, Virginia, said he filed a complaint when this sign was erected at the end of February 1995. He did not object to the request for a deferral which stated that the request was for the purpose of notifying residents. Mr. Stanton said he did not know what that meant because proper Notice had been in place in front of the sign in question for the required amount of time. He asked that, if the appeal hearing was going to be deferred, the sign be taken down in compliance with the Ordinance and the appeal could be made after the sign had been taken down. Chairman DiGiulian said he did not believe they could force the appellant to take the sign down at this time. William E. Shoup, Deputy Zoning Administrator, said that enforcement was automatically stayed once the appeal had been filed. Chairman DiGiulian asked if they could move back the time about thirty days. Mr. Shoup said the hearing could be moved to October 31, 1995 at 9:30 a.m. and the Board so moved. Chairman DiGiulian asked that staff notify the appellant that the requested deferral had been moved back 30 days and that the appearance of the appellant at the hearing was imperative.

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Page 78, September 12, 1995, (Tape 2), After Agenda Item:

Approval of Minutes May 16, June 20, June 22 and July 6, 1995

Mr. Hammack so moved and the other Board members concurred. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

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Page 78, September 12, 1995, (Tape 2), After Agenda Item:

Out-of-turn Hearing Request
McLean Children's Center, L.C., SP 95-D-058 and VC 95-D-098

In answer to a question from Mr. Dively, Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the earliest advertising date was October 31; however, the staff coordinator to whom these cases were assigned was on extended leave; therefore, the assignment would be given to one of the Special Exception and Rezoning staff coordinators. Ms. Kelsey said it would create a problem in getting the staff report to the Board of Zoning Appeals in a timely fashion. She gave some background on the applications and a discussion ensued. Mr. Dively moved to schedule the hearing for October 31, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

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Page 79, September 12, 1995, (Tape 2), After Agenda Item:

Request for Change in Permittee
by Northern Virginia Golf Center, SPA 85-S-059

Mr. Pammel so moved and the other Board members concurred. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

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Page 79, September 12, 1995, (Tape 2), After Agenda Item:

Memorandum dated August 31, 1995 from
William E. Shoup, Deputy Zoning Administrator
re: Mike's Service Center *via* Cedar Park Citgo
and
re: Bell Atlantic Ninex

Chairman DiGiulian asked if there was anyone present who wished to address the Mike's Service Center appeal. Sandra Hall, 13311 Jasper Road, came forward and said that she and her husband operated this facility and they believed they had filed within the 30-day time limit for filing an appeal, having followed the direction given to them by the U-Haul organization. Chairman DiGiulian said it appeared that the appeal was filed 31 days after the Notice of Violation. Mr. Hall also came forward to ask the Board for acceptance of the appeal.

Mr. Hammack asked the Halls if they challenged the fact that they filed their appeal on July 20. Ms. Hall said that was the day she was instructed to file the appeal. Chairman DiGiulian asked if they had been given Notice on the 19th and she said they had. She said they waited for U-Haul to give them instructions on how and when to proceed. The Board consulted a calendar to check the number of days and discussed the computation of time section of the Zoning Ordinance. Mr. Hammack said he would like to look at that section again before voting on this appeal and asked if the decision could be deferred to the following Thursday, two days hence. Mr. Pammel seconded the motion.

David Minyard, 605 Truman Circle, SW, Vienna, Virginia, came forward to speak in favor of the appeal and proceeded to read a written presentation. Chairman DiGiulian advised Mr. Minyard that he should address the deferral of the appeal. He gave Mr. Minyard permission to quickly make his presentation, which he read in great detail and referred to the quality of service provided by the appellant. It was necessary for Chairman DiGiulian to explain to Mr. Minyard that the issue under discussion was whether the appeal had been timely filed and not the quality of the service of the appellant's operation. Mr. Minyard continued to address issues not related to the deferral of the decision to accept the appeal.

There were no other speakers and Mr. Pammel moved to defer consideration on the acceptance of the appeal to September 14, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

Mr. Pammel moved to accept Bell Atlantic Ninex Mobil Inc. and schedule the appeal for the morning of October 24, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Kelley was absent from the meeting.

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Page 79, September 12, 1995, (Tape 2), After Agenda Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, called the Board members' attention to Information Items regarding the out-of-turn hearing issue and the haunted house.

Some time elapsed while the Board members read the Information Items.

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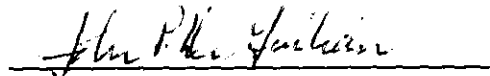
As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Geri B. Bepko

Approved on: February 13, 1996



Betsy S. Hartt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 14, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Timothy McPherson; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 81, September 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. CARL & ANN BIRSACK, VC 95-V-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from rear lot line. Located at 7111 Richard Casey Ct. on approx. 11,084 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((29)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carl Biersack, 7111 Richard Casey Court, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating the subject property is 11,084 square feet in size, is zoned R-4 and is located on the south side of Richard Casey Court, east of Fort Hunt Road. Surrounding properties in the Randall Estates subdivision to the north, east and west are also zoned R-4 and are developed with single family dwellings. Residential properties to the south are zoned R-4.

The request for variance resulted from the applicants' proposal to construct a screened porch addition to be located 14.1 feet from the rear lot line. A 25.0 foot rear yard is required on a lot zoned R-4. Therefore, a variance of 10.9 feet was requested.

Mr. Biersack said the variance requested met the County requirements. He stated the irregular shape of the property along with the placement of the house on the narrow and shallow section of the property prevented construction of the porch without a variance. Mr. Biersack concluded by stating the porch would not restrict, harm, or detract from the adjacent properties and the porch would compliment other homes in the neighborhood.

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

Mr. Hammack moved to grant VC 95-V-072 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-072 by CARL AND ANN BIRSACK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.1 feet from the rear lot line, on property located at 7111 Richard Casey Court, Tax Map Reference 93-3((29))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,084 square feet.
4. The applicant met the nine required standards for variance.
5. The house is sited at an angle.
6. There is no detrimental impact on the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific screened porch addition shown on the plat prepared by Holland Engineering dated March 4, 1995, and revised May 17, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RICHARD C. PRIDGEN, VC 95-M-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 7127 Alger Rd. on approx. 10,780 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 129.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard C. Pridgen, 7127 Alger Road, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating the subject property is 10,780 square feet in size, is zoned R-4 and is located on the south side of Alger Road, east of Graham Road. Surrounding properties in the Woodley subdivision are also zoned R-4 and are developed with single family dwellings.

The request for variance resulted from the applicant's proposal to construct a garage addition to be located 7.0 feet from the side lot line. A 10.0 foot side yard is required on a lot zoned R-4. Therefore, a variance of 3 feet was requested.

Mr. Pridgen stated a large oak tree and a gas line caused the proposed addition to require a variance.

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

Mr. Pammel moved to grant VC 95-M-073 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-073 by RICHARD C. PRIDGEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line, on property located at 7127 Alger Road, Tax Map Reference 50-3((4))129, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.

3. The area of the lot is 10,780 square feet.
4. The applicant presented testimony indicating compliance with the nine required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Rice Associates, P.C. dated May 8, 1995, and revised May 24, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MR. & MRS. EDWARD S. MANUKIAN, VC 95-P-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second floor addition 3.0 ft. from side lot line. Located at 6129 Brook Dr. on approx. 9,600 sq. ft. of land zoned R-3 and HC. Providence District. Tax Map 51-3 ((19)) (H) 19. (Concurrent with SP 95-P-040).

MR. & MRS. EDWARD S. MANUKIAN, SP 95-P-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 3.0 ft. from one side lot line and 2.7 ft. from the other side lot line. Located at 6129 Brook Dr. on approx. 9,600 sq. ft. of land zoned R-3 and HC. Providence District. Tax Map 51-3 ((19)) (H) 19. (Concurrent with VC 95-P-074).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Bonstra, 311 Cameron Street, Alexandria, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine, stating the application was a request for a modification in the building location because of an error to allow a dwelling to remain 3.0 feet from the southern side lot line and 2.7 feet from the northern side lot line. In addition, the applicant requested to allow the house to remain in its current location because the house was constructed in 1941 under a building permit, but it wasn't constructed in accordance with the 1941 Zoning Ordinance which required a 15.0 foot minimum side yard. Therefore, the special permit was requested.

Mr. Bonstra, Agent, said the house was built in error in 1941. He stated the existing stone house had not been modified since it was built and requested that it be allowed to remain in the present location. Mr. Bonstra said the variance request was to allow a second floor addition to be constructed above the existing one story wing of the house. He stated the addition would be compatible with the existing dwelling and the surrounding neighborhood.

In response to Chairman DiGiulian's question, Mr. Bonstra replied the addition would not come any closer to the side lot line than the existing dwelling.

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

Mr. McPherson moved to grant VC 95-P-074 and SP 95-P-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995, as revised.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-074 by MR. AND MRS. EDWARD S. MANUKIAN, under Section 18-401 of the Zoning Ordinance to permit construction of second floor addition 3.0 feet from side lot line, on property located at 6129 Brook Drive, Tax Map Reference 51-3((19))(H)19, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 and HC.
3. The area of the lot is 9,600 square feet.
4. The applicant presented testimony indicating compliance with the nine required standards for variance.
5. The applicant was seeking to remedy the existing condition by coming into compliance with the current standards.

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

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

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

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

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

1. This variance is approved for the location and the specified second story addition shown on the plat prepared by Larry N. Scartz, dated August 19, 1988, revised and recertified by Dennis Burns on July 28, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-1. Mr. Ribble abstained from the vote and Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

Mr. McPherson moved to grant VC 95-P-074 and SP 95-P-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995, as revised.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-P-040 by MR. AND MRS. EDWARD S. MANUKIAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 3.0 feet from one side lot line and 2.7 feet from the other side lot line, on property located at 6129 Brook Drive, Tax Map Reference 51-3((19))(H)19, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified dwelling shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat entitled, House Location Survey, Lot 19, Section 3, Block H, Lee Boulevard Heights, prepared by Larry N. Scartz, dated August 19, 1988, revised and recertified by Dennis Burns on July 28, 1995, submitted with this application, as qualified by these development conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 5-1. Mr. Ribble abstained from the vote and Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 88, September 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BONNIE M. SPENCER, SP 95-Y-039 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limits on the keeping of animals to permit three dogs on a lot containing less than 12,500 sq. ft. Located at 4418 Holly Ave. on approx. 1,500 sq. ft. of land zoned PDH-8. Sully District. Tax Map 56-1 ((14)) 126.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bonnie M. Spencer, 4418 Holly Avenue, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine, stating the 1,500 square foot lot is developed with a townhouse in the PDH-8 District and is located on the east side of Holly Avenue within the Glen Alden Subdivision. The property is surrounded by lots in the PDH-8 District with townhouses and community open space areas to the rear of the townhouse lot.

The applicant was requesting approval to keep three dogs on the property. The Zoning Ordinance requires a minimum lot size of 12,500 square feet for three (3) dogs and a maximum of two (2) dogs are allowed on lots that are less than 12,500 square feet.

Ms. Kelsey informed the Board of Mr. Heine's site visit in which he found the dogs to be friendly and the yard clean from debris.

Mr. Hammack asked Ms. Kelsey what generated the complaint. Ms. Kelsey stated that the applicant was issued a Notice of Violation as a result of a neighbor's complaint.

Ms. Spencer said the reason for the complaint was due to a judgement error, she explained that she was away from her residence approximately 12 to 14 hours on one occasion and left the back door open for the dogs to go in and out and the dogs had been too loud. Ms. Spencer submitted a letter in support from a neighbor.

In response to Mr. Ribble's questions, Ms. Spencer replied the dogs are mixed bred, weigh approximately 60 to 65 pounds and are 7, 5, and 2 years of age.

Mr. Hammack asked if there were any other complaints involving noise. Ms. Spencer said the families on both sides had called her with complaints about barking, and odor from the back yard, and she now takes the dogs to the common dog walk area.

Mr. Dively asked Ms. Spencer if she agreed to the conditions in the staff report. Ms. Spencer said she agreed with the conditions and would continue to minimize the impact on the neighbors. Mr. Dively explained to Ms. Spencer that if the special permit was granted and any conditions were violated, the special permit would be revoked.

Mr. Hammack asked if the dogs had been spayed or neutered. Ms. Spencer replied they had.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Grant Pinto, 4415 Holly Avenue, Alden Glen Community Association's Board of Directors, said the Board had no opinion and no concern with Ms. Spencer keeping three dogs. He also stated he has lived in the area for 7 years, is familiar with the dogs and that he does not have a problem with the dogs.

In response to Mr. Ribble's question, Mr. Pinto replied if Ms. Spencer took the same care with four dogs as she does with three, his position would remain the same.

Chairman DiGiulian called for speakers in opposition.

Ann Arnold, 4420 Holly Avenue, made reference to submitted letters and said there was no compelling reason to keep three dogs. Ms. Arnold explained that her negative experiences involved excessive barking, and odor coming from the yard. She also said she believed the neighbors weren't able to sell their house due to Ms. Spencer's dogs.

Ms. Spencer, in rebuttal, apologized for the judgement error and said the dogs were no longer allowed outside when she was not home. She also said the dogs are managed more efficiently than the other dogs in the neighborhood.

Mr. Ribble moved to deny SP 95-Y-039 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-039 by BONNIE M. SPENCER, under Section 8-917 of the Zoning Ordinance to permit modification to the limits on the keeping of animals to permit three dogs on a lot containing less than 12,500 square feet, on property located at 4418 Hollis Avenue, Tax Map Reference 56-1((14))126, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-8.
3. The area of the lot is 1,500 square feet.
4. This is an emotional situation.
5. The rear yard is small.
6. The dogs weigh 60 lbs. or more.
7. There was concern for the children in the neighborhood.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-917 of the Zoning Ordinance.

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

Mr. Ribble amended the motion to allow the applicant six (6) months to find another home for one of the dogs. Mr. Pammel seconded the motion which carried by a vote of 5-1 with Mr. Dively voting nay. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995.

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Page 90, September 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LEONARD ADLER, VC 95-B-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 1 having a lot width of 182.02 ft. and proposed Lot 2 having lot width of 1.0 ft. Located at 11307 and 11313 Lee Hwy. on approx. 5.58 ac. of land zoned C-5, R-1 and WS. Braddock District. Tax Map 56-2 ((1)) 47 and 51. (IN ASSOCIATION WITH RZ 95-B-014 and SE 95-B-017) (MOVED FROM 6/27)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carson Lee Fifer Jr., 8280 Greensboro Dr. Suite 900, McLean, Virginia, replied that it was.

Lorrie Kirst, Staff Coordinator, Special Exception and Rezoning Branch, presented the staff report stating the property is located on the south side of Route 29 and approximately 300 feet east of the intersection of Route 29 and Shirley Gate Road.

The request was to permit the subdivision of existing parcels 47 and 51 into two lots, with proposed Lot 1 having a lot width of 182 feet and proposed Lot 2 having a lot width of 1.0 foot. Proposed Lot 1 is zoned C-5 and is required, pursuant to the Zoning Ordinance, to have a minimum lot width of 200 feet and proposed Lot 2 is zoned R-1 and is required, pursuant to the Zoning Ordinance, to have a minimum lot width of 150 feet.

On August 7, 1995, the Board of Supervisors approved RZ 95-B-014 which was a request to rezone the front portion of the property to the C-5 district in order to establish up to two eating establishments; to rezone the middle portion of the site for use as a parking lot for the proposed eating establishments; and to rezone the back portion of the property to the R-1 district for either an 8,000 square foot institutional use, as may be

approved in the future, or public or private open space. Proposed Lot 2 would accommodate either the possible institutional or open space uses.

The Board of Supervisors also approved SE 95-B-014 for parking in a residential district. The special exception application applied to the middle portion of the property.

A variance application must satisfy the provision of Section 18-404 of the Zoning Ordinance. It was staff's opinion that the application did not meet the provisions of Standard 6. Staff could not conclude that all reasonable use of the land would be prohibited without approval of this variance. Irrespective of the requested variance, the eating establishment uses could be constructed.

In response to Mr. McPherson's question, Ms. Kirst stated parcel 49 and 50 are both zoned C-8 and are vacant or with older houses on them.

Mr. Pammel asked what was staff's opinion on the institutional use. Ms. Kirst stated staff had recommended denial of the application.

Mr. Fifer, with the law firm of McGuire, Woods, Battle & Booth L.L.P., said the situation was unusual. He explained the concept was to create a separate parcel behind the commercial parcel that would be available for an institutional use or for Fairfax County Park, if the institutional use was not approved. Mr. Fifer said for the institutional use or for the Fairfax County Park to have legal use of the lot, a connection to a public road was needed. He concluded by stating he believed the application met the necessary standards and without the variance the parcel could not be utilized.

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

Mr. Dively moved to grant VC 95-B-030 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report dated September 7, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-030 by LEONARD ADLER, under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 1 having a lot width of 182.02 feet and proposed Lot 2 having lot width of 1.0 feet, on property located at 11307 and 11313 Lee Highway, Tax Map Reference 56-2((1))47 and 51, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-5, R-1, and WS.
3. The area of the lot is 5.58 acres.
4. The parcel is unusual and incredibly narrow.
5. If the variance is not granted, the parcel would be unusable.

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

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

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

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

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

1. This variance is approved for the proposed layout for Lots 1 and 2 shown on the plat prepared by BC Consultants, dated June 8, 1995, submitted with this application and is not transferable to other land.
2. An ingress/egress easement shall be provided on Lot 1 to serve Lot 2 as determined by DEM.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHARLES R. & MARY E. WEIR, VC 95-D-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line and addition 34.5 ft. from front lot line. Located at 1472 Waggaman Circle. on approx. 15,030 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((17)) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles R. Weir, 1472 Waggaman Circle, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 15,030 square foot property is located on Waggaman Circle in the Dranesville District. The subject property is zoned R-2, the surrounding lots are zoned R-1 and R-2, and all are developed with single family detached dwellings.

The applicant requested a variance to allow a carport addition to be located 10.2 feet from the side lot line and a foyer addition to be located 34.5 feet from the front lot line. The carport addition would contain a lower level walk-out basement. A side yard of 15.0 feet and a front yard of 35.0 feet are required in the R-2 Zoning District; therefore, a variance of 4.8 feet was requested for the carport addition and a variance of 0.5 feet was requested for the foyer addition.

Mr. Weir stated the application satisfied the nine required standards for a variance and a building permit would be obtained and the addition would be architecturally compatible with the existing dwelling.

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

Mr. Pammel moved to grant VC 95-D-071 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-071 by CHARLES R. AND MARY E. WEIR, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.2 feet from side lot line and addition 34.5 feet from front lot line, on property located at 1472 Waggaman Circle, Tax Map Reference 30-2((17))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,030 square feet.
4. The variance request is minor.
5. The applicant presented testimony in compliance with the nine required standards for variance.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific additions shown on the plat prepared by Peter R. Moran, Land Surveyor, dated March 7, 1995, revised through May 8, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. RICHARD & RHO SILBERGLITT, VC 95-B-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 5403 Sideburn Rd. on approx. 10,744 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 111.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Silberglitt, 5403 Sideburn Road, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 10,744 square foot property is located on Sideburn Road in the Bonnie Brae Subdivision. The subject property and surrounding lots are zoned R-2 and developed with single family detached dwellings.

The applicant requested a variance to allow a 16 x 16 foot addition consisting of an enclosed deck to be located 18.0 feet from the rear lot line. The minimum rear yard in the R-2 Zoning District is 25 feet; therefore, a variance of 7.0 feet was requested. Ms. Langdon referenced an error noted on page 1 of the staff report, she said the variance requested was 7.0 feet and not 12.0 feet as was written in the staff report.

Mr. Silberglitt said the application met the required standards for a variance. He said the addition would be in harmony with the neighborhood, the adjoining neighbors supported the application, and would not be detrimental to the adjacent properties.

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

Mr. McPherson moved to grant VC 95-B-075 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-075 by RICHARD AND RHO SILBERGLITT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.0 feet from rear lot line, on property located at 5403 Sideburn Road, Tax Map Reference 77-2((2))111, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,744 square feet.
4. The applicant has met the nine required standards for a variance.
5. The variance request is consistent with previous changes made to the property.
6. There are minor impacts to adjacent properties.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated January 10, 1995, revised May 25, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 97, September 14, 1995, (Tape 1&2), Scheduled case of:

9:30 A.M. WAT TUMMAPRATEIP V.A.D.C. FOUNDATION, INC., SP 95-V-037 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 8526 Old Mount Vernon Rd. on approx. 1.96 ac. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((1)) 63.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James P. Franca, Esquire, 12631 Water Street, Clifton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 1.96 acre site is located on the southwest corner of the intersection of Old Mount Vernon Road and Nalls Road in the Mount Vernon District. The property is zoned R-2 and developed with a single family detached dwelling. The surrounding lots are also zoned R-2. To the north and west the lots are developed with single family detached dwellings. To the south is a C & P Telephone office and to the east is Mount Vernon High School.

The applicant requested approval of a special permit for a place of worship and related facilities. The existing 1 1/2 story dwelling is proposed to be used as a Wat, or place of meditation. The Wat will be open to visitors who wish to study with a monk or meditate on a daily basis. Approximately 2 to 3 visitors are anticipated at a time on weekdays. On Sundays, which will be the primary meditation period, visitors will come to the Wat from approximately 9 a.m. to 8 p.m., with no more than ten cars expected on the site at any one time. The maximum number of worshipers is expected to be fifty. Additionally, two monks will reside on site with 2 to 3 monks visiting on a regular basis, 5 to 10 children will also come to the Wat daily to study with the monks. The children's visits will be scattered over the course of the day. The only construction proposed under the application is the addition of 14 parking spaces to the north and west of the dwelling.

A development condition has been included requiring 25.0 feet of transitional screening along the western and northern lot lines. The applicant requested a waiver of the barrier requirement along the western and northern lot lines.

Staff believed that subject to the approval of the Proposed Development Conditions, the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SP 95-V-037. Staff recommended approval of a waiver of the barrier requirement along the western and northern lot lines. Staff also recommended that, if the BZA approved the application, the use should be established within 12 months of the date of approval. The site has a history of on-going violations as outlined in the staff report and if approved, all landscaping and additional improvements should be provided within a prompt time period. Staff included the requirements in the development conditions.

Ms. Langdon noted five letters in opposition that were distributed to the Board.

Mr. Pammel asked Ms. Langdon if this was a new application, and had there been approval for the use before now and is the sign on site in compliance with the Zoning Ordinance. Ms. Langdon replied there was a previous application but it was withdrawn. She also responded that there was a condition included in the staff report requiring that any sign located on the property be in compliance with the Zoning Ordinance.

In response to Mr. McPherson's question, Ms. Langdon replied the lot across the street is Mount Vernon High School.

Mr. Franca stated the applicant was prepared to meet the development conditions as stated in the staff report. He said since the parcel was large, the impact on residences would be minimized and the proposed use would not impact traffic. He continued by describing the use of the site. Mr. Franca stated the prior violations were due to a lack of communication with the prior monk who was in residence on the site. He said he was not sure why the prior application was withdrawn.

In response to Mr. Ribble's question, Ms. Langdon replied staff had recommended approval of the previous application and it was withdrawn in March of 1990.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Robert Peterson, 15703 Singletree Lane, Mount Claire, Virginia, said he began attending services at the site in 1991. He apologized for the previous monk's lack of communication and said it was due to the monk's inability to read or write English. Mr. Peterson stated he had been able to offer assistance and guidance with translation to help with the process of applying for a special permit. He said there are five religious ceremonies held each year off site and traffic would not be impacted.

Chairman DiGiulian called for speakers in opposition.

Larry Lipbedder stated the property was very visible. He presented an opposition petition, from the residents in the immediate vicinity, to the Board.

Charlotte Steade, 3706 Maryland Street, Alexandria, Virginia, said livestock was being kept on the property, and she heard gongs on Sundays. She also stated that traffic would be impacted.

Richard Thompson, 3704 Maryland Street, Alexandria, Virginia, said a traffic impact study was needed before anything else was added to the area. He also presented photographs of one of the religious festival and requested that the application be denied.

In rebuttal, Mr. Franca said most of the concerns resulted from the previous festivals held on the property. He said the parking spaces would be shielded by vegetation as stated in the development conditions, and there would be no visual impact on the community. Mr. Franca said the impact of the proposed use would be the same as the alternate use.

In response to Mr. Ribble's question, Ms. Langdon replied that the applicant had a signed agreement with Mount Vernon High School for parking and other uses on the school site.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny SP 95-V-037 for the reasons set forth in the Resolution.

Mr. McPherson said he recognized the concerns of the citizens, but the effort of the applicants showed their intentions to limit the use as outlined in the development conditions, and he voted against the motion.

Mr. Ribble noted the letter received in opposition, and said the use would not be harmonious with the neighborhood. He said there was a lack of confidence with what the applicant might do and a traffic situation that would be generated on a substandard road which would cause safety problems. Mr. Ribble said it was seldom that a member of the Board of Supervisors would take a negative stand against an application, but the District's Supervisor was opposed to the application.

Mr. Pammel said many religious institutions were in the midst of residential neighborhoods without adequate transportation facilities, and this institution does have access to a main road. He said the applicants indicated that the activities were not extensive and would not involve a lot of people and that the proposed use should be separated from the past use. Mr. Pammel said staff indicated that the application does conform with the Comprehensive Plan and is a minimal activity and he voted against the motion to deny.

Mr. Dively said the use provided an outlet for people who wanted to practice Buddhism and the traffic concerns were addressed in the conditions, and as long as the conditions were met and followed the use would be an addition to the community. Mr. Dively voted against the motion to deny.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-V-037 by WAT TUMMAPRATEIP V.A.D.C. FOUNDATION, under Section 3-203 of the Zoning Ordinance to permit a place of worship and related facilities, on property located at 8526

Old Mount Vernon Road, Tax Map Reference 101-4((1))63, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.96 acres.
4. This kind of an application is very difficult for a number of reasons. The first one being that some of the religious organizations that we have in the area that are not well established have a very difficult time finding sites on which they can construct a facility or operate a place of worship. The other reason is because we start with places of worship with a very modest impact on the community and they tend to mushroom into operations that have a very strong impact on the community. In looking at these, when you get to the smaller sites you have to look at them more carefully. Larger sites give a little more room for cushioning on noise, barriers, parking lots, and traffic impacts, etc. There are a lot of activities associated with this temple that are ongoing and impact the site in many ways that make it detrimental to the residential community. The lot is just under 2 acres in an older neighborhood. There are some other institutional uses in the area. There is a history of use of the site by the Buddhists being in non-compliance with the Ordinance and it is difficult, notwithstanding the good representations by the applicant's attorney, that they are now going to comply. They are holding off-site festivals across the road.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-203 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 3-3 with Mr. Dively, Mr. McPherson, and Mr. Pammel voting nay. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995.

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Page 99, September 14, 1995, (Tape 2), Scheduled case of:

9:00 A.M. LEE, GRAHAM CORPORATION, SP 95-P-041 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit building additions and site renovations. Located at 7319 Lee Hwy. on approx. 7.70 ac. of land zoned R-4 and HC. Providence District. Tax Map 50-1 ((1)) 50.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. R. Lin Lemon, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief stating the subject property is located on the south side of Lee Highway, west of the City of Falls Church line.

It is zoned R-4 and contains 7.7 acres. The property to the east is zoned C-2 and developed with a shopping center. The property to the south is zoned R-4 and developed with single family detached dwellings. The property to the west and north is zoned R-20 and developed with multi-family units.

The request was for a special permit to allow renovation and expansion of an existing bathhouse on the pool property. The property is under a special permit, first approved in 1954.

Staff's main concerns regarding the application were the hours of operation and screening. Since the property was approved as a special permit use so long ago, no limitation on hours of operation were placed on the use. As discussed in the staff report, staff applied hours of operation similar to other community pools and they were reflected in the proposed development conditions. The hours concerning the after hours parties was from the Board's policy on after hours parties. It was staff's understanding that, since the facility did not have a restriction on hours of operation, the operating hours were not the same as those recommended by staff. The applicant was to address this further in their presentation.

Staff also believed that additional screening was necessary, in the area along the western lot line shown on the plat, to effectively screen the new two-story bathhouse.

Ms. Kelsey said interparcel access was also required by the development conditions and that issue would be addressed at the time of site plan review.

Staff believed that with the implementation of the proposed development conditions, the application met the required standards for approval and thus, staff recommended approval of SP 95-P-041 subject to the development conditions in Appendix 1.

Ms. Kelsey stated originally the applicant came in to delete land area, and proposed R-4 zoning on the property to develop it into a residential development, they amended the application to continue with this acreage.

Mr. Lemon said the application was to replace and enlarge the current bathhouse that was 40 years old. He discussed the proposed development condition modifications requested by the applicant.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Lisa Downing, Belsford Landing Condominium Association's Board of Directors, said the Association supported the application.

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

Mr. Ribble moved to grant SP 95-P-041 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 5, 1995 with modifications.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-P-041 by LEE GRAHAM CORPORATION, under Section 3-403 of the Zoning Ordinance to permit building additions and site renovations, on property located at 7319 Lee Highway, Tax Map Reference 50-1((1))50, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1995; and

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

1. The applicants are the owners of the land
2. The present zoning is R-4 and HC.
3. The area of the lot is 7.70 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis, dated July 11, 1995, revised through August 4, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. One hundred and forty-eight (148) parking spaces shall be provided as shown on the special permit plat. The number of parking spaces may be reduced to no less than one hundred and forty (140) to allow for interparcel access to the east. All parking for the use shall be on site.
6. The hours of operation shall be limited to the following:
 - Tennis Courts - 8:00 a.m. to dusk
 - Swimming Pool - General hours of operation: 11:00 a.m. to 9:00 p.m.;
 - Lap swim only: 6:00 a.m. to 7:30 a.m.;
 - Swim team practice: 7:30 a.m. to 11:00 a.m.
 - Competition meets: No earlier than 9:00 a.m.
 - After-hours parties may be held with the following restrictions:
 - a. Parties shall be limited to ten (10) per season.
 - b. Parties shall be limited to Friday, Saturday and pre-holiday evenings. Four (4) week night parties may be permitted per year, provided they shall not exceed 11:00 p.m.
 - c. Parties shall not exceed 12:00 midnight.
7. There shall be no lights provided for the tennis courts.
8. There shall be no whistles, bullhorns, sirens or amplified music allowed prior to 9.00 a.m.
9. The existing vegetation shall be deemed to satisfy the transitional screening requirement along the northern, southern, and western lot lines except that Transitional Screening 1 shall be provided in the

area between approximately 280 and 405 feet from the southwestern corner of the site along the western lot line to screen the proposed two-story bathhouse.

10. The existing fencing shall be deemed to satisfy the barrier requirement along the northern, southern and western lot lines.
11. The Board of Zoning Appeals has no objection to the waiver of the service drive requirement at the time of site plan review.

The above development conditions supersede those imposed in conjunction with previous special permit approvals on the property.

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

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

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1995. This date shall be deemed to be the final approval date of this special permit.

The meeting recessed at 11:07 a.m. and reconvened at 11:17 a.m.

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Page 102, September 14, 1995, (Tape 2), Scheduled case of:

9:30 A.M. ROBERT A. ALDEN, APPEAL 95-D-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the structure located on Lot 74 is not considered an accessory structure since there is no principal use to which it is accessory and therefore it is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 7134 and 7136-A Old Dominion Dr. on approx. 7,527 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((1)) 73 and 74.

Lynne Strobel, with the law firm of Walsh, Colucci, Stackhouse Emrich and Lubeley P.C., represented the appellant.

William Shoup, Deputy Zoning Administrator, said the issue was the appellant's use of a storage type building for a library and storage on Lot 74. He said at the time the structure was built, the appellant owned and resided on Lot 77 and as long as the structure on Lot 74 was used in connection with Lot 77 the structure was permitted as an accessory structure and was considered one Lot under the Zoning Ordinance. In 1992, the appellant sold Lot 77 and retained ownership of Lot 74 and it became the principal use on the property and as such the structure was in violation of Section 2-302 of the Zoning Ordinance which does not permit this use in the R-3 District.

Mr. Shoup noted a correction in the staff report that said a portion of the structure was built without a building permit. He said Ms. Strobel had produced a copy of a Department of Environmental Management (DEM) receipt showing the building permit had been issued. Mr. Shoup apologized for the error and said the computer indicated a building permit had not been issued. He said whether or not the building permit was

issued does not change the situation, the fact was that when the structure was built it was all one lot owned by the appellant and the change in owner created the violation.

In response to Mr. Hammack's question, Mr. Shoup replied to clear the violation the structure would have to be sold to the adjoining property owner or removed from the property.

Ms. Strobel said the appellant constructed the building in 1982 after obtaining a building permit to house the library. She said the building was inspected by Fairfax County officials at every point in the building process. Ms. Strobel stated the appellant believed the decision should be overturned. She said the Ordinance does not explicitly require the same ownership between a principal and accessory use. She asked the Board to carefully consider the definitions in the staff report pertaining to lot and accessory use. Ms. Strobel submitted photographs showing the permits posted on the interior of the building, copies of approval inspections, and six letters in support of the application.

Mr. Dively asked what brought about the violation. Mr. Shoup said staff was contacted by DEM, the agency responsible for assigning addresses to properties, and apparently Mr. Alden assumed an address that was never assigned by the County and maintains a mailbox on the street. He said subsequent to the contact from DEM a call was also received from a nearby citizen.

Mr. Alden discussed the history of the building permits obtained from Fairfax County. He said the violation was a technical violation and if he still owned Lot 77 there would be no violation.

Chairman DiGiulian asked if there was anyone to speak to the appeal.

Cedric Quick, 7140 Old Dominion Drive, said he was concerned about the safety of the structure and children in the neighborhood. He said he retained an attorney who reviewed the planning history and based upon investigation he said the lot was not approved for any type of construction or use; therefore, the street address was invalid and the installation of the mailbox was unlawful. Mr. Quick stated the unit was used as a storage unit and surrounded by debris and rats. He also presented photographs to the Board.

Brian Costello, Attorney for Mr. Quick, said the building was a dilapidated storage shed for junk and was an eyesore. He said there was no justification to maintain the storage shed. Mr. Costello presented a letter from Mr. Alden dated August 28, 1995 and a check dated August 23, 1995 in which Mr. Alden represented 7134 and 7140 Old Dominion Drive as his address.

Terrence Brown stated the construction was illegal and he opposed it. He said the rodent problem was an issue and the structure was in disrepair.

Mr. Shoup said the issue was not whether the appellant followed procedures and received building permits, he said the structure was legally established but the circumstances had changed. Mr. Shoup said the ownership had changed and as a result the structure was not being used as an accessory use; therefore, it was not permitted as a principal building and could not be used separately on the lot.

Ms. Strobel said the building is kept locked and that it was not a residential use. She said the use was legally established and should be allowed to remain.

Chairman DiGiulian closed the public hearing.

Mr. Dively said Mr. Alden stated several times that the violation was technical but he believed that the use was also a violation of the spirit of the Ordinance and he moved to uphold the Zoning Administrator. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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9:30 A.M. AMERICAN PERSONAL COMMUNICATIONS, L.P., APPEAL 95-V-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the establishment of a telecommunications facility on the Village Apartments property constitutes an enlargement of nonconforming use and would be in violation of Par. 1 of Sect. 15-103 of the Zoning Ordinance. Located at 9140 Richmond Hwy. on approx. 1.20 ac. of land zoned C-8. Mt. Vernon District. Tax Map 109-1 ((1)) 31.

Paul Gallagher, Attorney with the law firm of Jackson & Campbell, P.C., represented the appellant.

William Shoup, Deputy Zoning Administrator summarized the location of the property and noted that the apartment complex is a nonconforming use in the C-8 district. The appellant proposed to lease a 600 square foot portion of the site for a 180 foot monopole for cellular communication. Mr. Shoup said such a use was permitted by right in the C-8 district, however at issue was whether the use could be added to this site which contained a nonconforming use. He said Par. 1 Sect. 15-103 of the Zoning Ordinance precludes the enlargement or extension of a nonconforming use and in this instance the nonconforming use included the buildings, the parking area, the yards, and the open space of the entire site. Mr. Shoup presented photographs to the Board showing the location of the proposed monopole. He said it was staff's position that the use of the land area constituted a reduction in land area of the nonconforming use that resulted in intensification or enlargement of the use which was in conflict with Par. 1 of Sect. 15-103.

Mr. Shoup said points raised by the appellant with respect to the Virginia Supreme Court ruling in the Masterson case were addressed in the staff report. He said Karen Harwood of the County Attorney's office was present to comment on the Masterson case and to answer any legal questions in regard to the issue.

In response to Mr. Pammel's question, Mr. Shoup replied in terms of usage the monopole would be another principal use on the property.

Ms. Harwood summarized the differences between the American Personal Communications Appeal and the Masterson case. Ms. Harwood noted that it was critical to remember that in the Masterson case, the Zoning Administrator in Virginia Beach ruled under their Ordinance that construction of a use by right within the setback requirements, and including parking spaces in a location that conforms to current Ordinance requirements, did not violate the Virginia Beach Zoning Ordinance. She said that the Virginia Beach Zoning Ordinance in question said that no nonconforming structure shall be enlarged, extended, constructed or structurally altered if the effect was to increase the nonconformity. The Fairfax County Zoning Ordinance does not include the same language as the Virginia Beach Zoning Ordinance. What was instructive about the Masterson case was the rule of construction that the court placed on it, Ms. Harwood said the concept of removing land area from a nonconforming site is an intensification, which is an enlargement and that had been the construction of the Fairfax County Zoning Ordinance for at least 17 years.

Mr. Pammel asked Ms. Harwood if her opinion implied whether this was conveyed by lease or by out right sale. Ms. Harwood replied because it is taking land area away and devoting it to another use, it is removing the land area from the site and the nonconformity on this property encompasses everything because the nonconforming use includes everything not just the building location.

Mr. Gallagher said there were numerous basis to challenge staff's determination. He said it was stated by Virginia Courts that Zoning Ordinances should be strictly construed in favor of the property owner, the same as other laws which were in derogation of a common law right as to the use of private property, which was a Virginia Circuit Court opinion from 1976. Mr. Gallagher said staff hadn't just expanded the meaning of a term that was included in the Ordinance but had unilaterally modified the language of the Ordinance by adding terms that greatly and improperly expanded the impact of the Ordinance to parties in which it otherwise would not apply.

Mr. Gallagher said the County argued that in applying the Ordinance one must look at the relationship of the apartment to the land on which they are located, it was therefore inconsistent for the County to then ignore the fact that the total nonconforming use was actually decreasing. He said the appellant believed the Masterson Case was very applicable in this situation and that the relevant portion of the ordinance in Masterson was almost identical despite the minor differences that had been referred to by the staff. Mr.

Gallagher said the Masterson case spoke of enlargement or extension and did not refer to intensification in any way. He said the Masterson case controls the appellant's case because the appellant was not seeking to expand the nonconforming features of the lot but merely to add a structure that conformed to the Zoning requirement and was permitted by right. He said staff had orally expanded the language of the Ordinance, had acted in a manner that thwarted the intent of the Ordinance and where nearly identical cases demonstrated the error in staff's interpretation it was the duty and responsibility of the BZA to rectify those errors.

The appellant requested that the BZA overrule the staff's determination on this issue and return the application to the staff for a 456 determination where some of staff's concerns were more appropriately addressed.

Mr. Pammel said after hearing the arguments of both sides he concurred completely with the Zoning Administrator's interpretation and moved to uphold the opinion of the Zoning Administrator with reference to Appeal 95-V-033. It was seconded by Mr. McPherson and carried by a vote of 5-0-1 with Mr. Dively abstaining from the vote.

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9:30 A.M. JOHN E. & KATHRYN M. CLARK, APPEAL 94-V-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has constructed a garage in a front yard in violation of Par. 11C of Sect. 10-104 of the Zoning Ordinance. Located at 11429 Potomac Rd. on approx. 16,000 sq. ft. of land zoned RE. Mt. Vernon District. Tax Map 119-4((2)) (14) 16, 17, 18. (DEF. FROM 10/11 AT APPLICANT'S REQUEST. RESCHEDULED ON 3/14. DEF. FROM 7/11)

Mr. Pammel moved to accept the withdrawal of the appeal and the motion carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Allan R. Fagan Appeal Request

Christopher Rau, Attorney representing Mr. Fagan, said they wanted to set another date on hearing the appeal if possible, and decide the scope of the appeal.

Mr. Shoup said the appeal was a second Notice of Violation and the scope of the appeal should be limited. He said staff wanted to narrow the scope of the appeal and recommended a hearing date of January 9, 1996, since a special permit application had been filed for an error in building location.

Mr. Pammel moved to schedule the appeal for the morning of January 9, 1996 limiting the scope of the appeal. It was seconded by Mr. McPherson and carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Mike's Service Center T/A Cedar Park Citgo Appeal Request

The Board of Zoning Appeals, the Deputy Zoning Administrator, and the appellant discussed the date of the Notice of Violation letter with respect to the 30-day time frame for filing an appeal. Board members expressed the opinion that the 30-day time frame commences when the Notice is received. Accordingly, Mr. Hammack moved to schedule the appeal for the morning of November 14, 1995. It was seconded by Mr. Dively and carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

Page 106, September 14, 1995, (Tape 3), After Agenda Item:

Approval of Revised Plats
Sharkey's Inc. D/B/A Fast Eddie's Billiard Cafe, SP 95-V-031

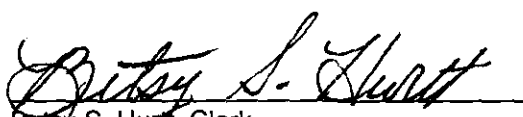
Mr. Pammel moved to approve the revised plat and the resolution effective September 14, 1995. It was seconded by Mr. Dively and carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

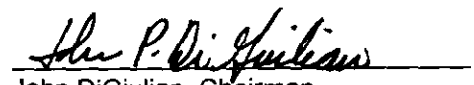
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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Regina Thorn

Approved on: October 31, 1995


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 19, 1995. The following Board Members were present: Robert Dively; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble. Chairman DiGiulian and Paul Hammack were absent

Vice Chairman Ribble called the meeting to order at 8:02 p.m. There were no Board Matters to bring before the Board and Vice Chairman Ribble considered the first action item.

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Page 101, September 19, 1995, (Tape 1), Scheduled case of:

Approval of Minutes
from May 30 and June 6, 1995 hearings

Mr. Dively moved to approve the Minutes from May 30 and June 6, 1995 hearings. Mr. McPherson seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote and Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 101, September 19, 1995, (Tape 1), Scheduled case of:

8:00 P.M. NICHOLAS B. AND DIANE G. ARGERSON, SPA 70-M-120 Appl. under Sect(s). 8-014 of the Zoning Ordinance to amend SP 70-M-120 for dental office to permit medical office and change of permittee. Located at 2959 Sleepy Hollow Rd. on approx. 23,208 sq. ft. of land zoned R-3, HC and SC. Mason District. Tax Map 51-3 ((14)) 1A. (MOVED FROM 8/1 AT APPL.'S REQ.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Nicholas Argerson, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that this 23,208 square foot property is located on the east side of Sleepy Hollow Road immediately adjacent to the Seven Corners Community Business Center. The property is zoned R-3, HC and SC and was developed with a 2,400 square foot dentist office which was residential in appearance. All surrounding lots are also zoned R-3. To the north, the property is developed with Fairfax County Fire Station No. 28. To the west across Sleepy Hollow Road is the Dominion Hospital and to the south and east are single family detached dwellings. The lot immediately to the south is vacant.

The applicants have requested approval of a special permit amendment for a dental office to allow a general medical office and change of permittee. The existing structure was proposed to be used as a medical office for physical therapists, pediatric doctors, etc. A maximum of two (2) doctors has been proposed. Office hours will be 8:00 a.m. to 6:00 p.m., Monday through Friday with occasional weekend and evening use. The one-story building, ten (10) space paved parking lot, six foot high board-on-board fence and sign would remain. No new construction has been proposed under this application. The applicant has also requested a change of permittee to allow other dentists or doctors to use the site. Special Permit 70-M-120 has been an existing and currently valid special permit use which was granted to the applicant in July of 1970, specifically for use as a dental office. The structure on site was built to house the dental office and has never been used as a residence. The approved special permit use is no longer allowed as a special permit use in the R-3 District.

However, Paragraph 2 of Section 8-014 of the Zoning Ordinance states that the Board of Zoning Appeals (BZA) may review and approve an amendment to an existing and currently valid special permit, provided such amendment does not permit the use to be enlarged, expanded, increased in intensity, relocated or continued beyond any time limitation specified in the existing permit.

The applicant has also requested a modification of transitional screening and barrier requirements along the eastern and southern lot lines to allow the existing vegetation and fence to fulfill screening requirements.

Staff believed that subject to the approval of the Proposed Development Conditions, the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and recommends approval of SPA 70-M-120. Staff recommended approval of a modification of transitional screening and barrier requirements but has included a proposed development condition requiring additional plantings along the southern lot line.

Nicholas Argerson, 528 Haven Lane, Great Falls, Virginia, stated that he originally appeared before the Board of Zoning Appeals on July 14, 1970 with an application that allowed offices in general practice of medicine. He has been in practice for twenty-three years and has developed good relations with his neighbors. In 1988 and 1984 applications were made to rezone his property to commercial and for a special exception for a medical office, but neither application was heard by the Board of Supervisors because of opposition from the neighborhood. Mr. Argerson stated that if this amendment is granted he will abide by the ten proposed development conditions.

Vice Chairman Ribble called for speakers in support, and hearing no reply called for speakers in opposition.

Chadwick Gore, 3014 Castle Road, Falls Church, Virginia, stated his opposition to be his fear of commercialization along Sleepy Hollow Road. The community has requested that upon sale, the property reverts to R-3 and that any new purchaser follows the special use permit application procedures currently in place. Mr. Gore submitted a letter in opposition from Mr. and Mrs. Thomas Nelson, who live adjacent to the applicants' property.

Mr. Dively asked Mr. Gore how this application changes the nature of the neighborhood. He replied that it was their understanding that the special use permit will convey with the sale of the property and the citizens would not have the right to comment if this was approved.

Hank Strickland, 3035 Homes Run Road, Falls Church, Virginia, stated that the applicants' property is surrounded by residentially zoned properties. The area homeowner associations have been strongly opposed to the intensification of this property. Mr. Strickland submitted letters in opposition from the Chairman of the Mason District Council, Ms. Arlene Whitten, and a member of the Mason District Land Use Committee, Mr. Roy Landsbury.

In rebuttal, Mr. Argerson stated that the idea of reverting the building back to residential is impractical and would be a financial hardship. The property has been a dental office for twenty-three years and no one has been adversely affected by their presence.

Chairman Ribble asked staff if they had a more current plat than the 1993 plat that was submitted. Susan Langdon replied negatively and stated that staff made a site visit and the plat does conform to site conditions.

Mr. Kelley questioned whether the applicant would be permitted to expand the building. Susan Langdon replied no, that because the originally approved special permit is currently not an allowed use in this zoning district, he could not intensify the use with the site.

Mr. Kelley stated that he thought there were going to be more medical practioners allowed than just two. Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained that the existing special permit is silent as to the number of practioners. The Zoning Ordinance which was in effect at the time that this use was approved allowed two medical practioners. There was a condition added that will limit it to two medical practioners.

Vice Chairman Ribble asked if there was a limit on the number of employees the applicant will be able to hire. Mr. Argerson replied that in the conditions there was an estimated number of ten employees that they could hire.

Vice Chairman Ribble closed the public hearing.

Page 109, September 19, 1995, (Tape 1), NICHOLAS B. AND DIANE G. ARGERSON, SPA 70-M-120, continued from Page 108

Mr. McPherson moved to grant SPA 70-M-120 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 12, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 70-M-120 by NICHOLAS B. AND DIANE G. ARGERSON, under Section 8-014 of the Zoning Ordinance to amend SP 70-M-120 for dental office to permit medical office and change of permittee, on property located at 2959 Sleepy Hollow Road, Tax Map Reference 51-3 ((14)) 1A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 19, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3, HC, and SC.
3. The area of the lot is 23,208 square feet.
4. The particular use of this type is a transitional use.
5. This is a transitional area with changes being made.
6. The Zoning Ordinance provides for this sort of special permit to be granted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-014 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. Approval of this amendment does not permit the existing use, based on the original Special Permit plat, to be enlarged, expanded or increased in intensity. Furthermore, any future change of permittee shall not extend to subsequent purchasers beyond an initial transfer granted by this applicant. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Runyon, Dudley, Anderson, Associates, Inc., dated September 10, 1993 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. Existing vegetation on site shall be preserved and maintained as indicated on the approved special permit plat. Additional evergreen trees shall be planted along the southern lot line adjacent to Lot 2A. These trees shall provide the maximum amount of screening possible in the limited space available without compromising the future health of the vegetation, and shall be planted to screen the proposed parking lot and structure from adjacent residential properties. The number, species and size of the trees to be planted shall be determined by the Urban Forestry Branch, Department of Environmental Management.
6. The six (6) foot high board-on-board fence located adjacent to the parking lot shall satisfy the barrier requirements and shall be maintained in good repair.
7. Ten (10) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.
8. A maximum of two (2) medical doctors and/or dentists shall be allowed to operate on the site.
9. There shall be no parking lot lighting on site.
10. A sign permit shall be obtained for any sign proposed for this site.

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

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

Mr. Dively seconded the motion which carried by a vote of 4-0-1, with Mr. Kelley abstaining. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 110, September 19, 1995, (Tape 1), Scheduled case of:

8:00 P.M. VIETNAMESE BUDDHIST ASSOCIATION, SP 95-Y-021 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 7605 Bull Run Dr. on approx. 5.09 ac. of land zoned R-C and WS. Sully District. Tax Map 73-1 ((2)) 13. (MOVED FROM 7/6)

Vice Chairman Ribble stated that he had a letter from the applicant requesting a withdrawal. Mr. Dively made a motion to accept the withdrawal and Mr. McPherson seconded the motion which carried with a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 110, September 19, 1995 (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. MOORE, APPEAL 95-D-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles, construction equipment and other items in an R-1 District and the installation of a fence is in violation of Zoning Ordinance provisions. Located in the 9900 Block of Georgetown Pi. on approx. 4.94 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((9)) 3A. (DEF. FROM 6/22 FOR LACK OF A QUORUM. DEF. FROM 7/11 AT APP.'S REQUEST)

William Shoup, Deputy Zoning Administrator, stated that the property is located in the 9900 blk of Georgetown Pike. The property is split zoned C-8 and R-1, with the majority of the site being zoned R-1. The property is owned by the appellant and contains approximately 4.93 acres and a septic field which serves the Village Center Shopping Center. At issue in the appeal is the storage of vehicles, construction equipment, and other items including dumpsters on the R-1 portion of the property, and the installation of a fence which partially surrounds the storage area. Staff's position was that such a storage area was a storage yard and that use is not permitted in the R-1 District. The fence is part of the storage yard use and the dumpsters are related to the adjoining shopping center use therefore these are not permitted accessory uses. As a result, the use of the property is in violation of Paragraph 5 of Section 2-302 of the Zoning Ordinance. Mr. Shoup noted that the appellant suggested that the use of the subject property was for the maintenance of the septic field located on the property, which serves the shopping center use. Staff's review of the files indicated that site plan approval for the shopping center included the use of the subject property for a septic field only. There was no approval of storage yard activity or a dumpster, nor could there have been under the Zoning Ordinance provisions in effect at that time. Mr. Shoup further represented that while the septic field is a nonconforming use it does not convey any further rights to the appellant and he therefore asked that the BZA uphold their position in this appeal.

Mr. Pammel asked if the shopping center was approved with the sewage disposal system located on the adjacent tract and if it could be on that site even though it was not part of the commercially zoned property. Mr. Shoup replied yes, that site plan approval was in December of 1978 and at that time the Zoning Ordinance allowed this type of situation.

Fred Taylor, 8134 Old Keene Mill Road, Springfield, Virginia, the appellant's agent, stated that there are two issues involved; one is the fenced area around the equipment being stored and the second is the dumpsters that are located on the site. The site plan for the shopping center was approved in conjunction with this property in the 1960's and it was not as detailed as they are today. There was no mention of the placement of dumpsters nor keeping of support equipment on the property, but there is no prohibition either. It was due to the building of new houses that prompted Mr. Moore to construct the fence in order to remove the support equipment from view. A complaint was registered during the last phase of putting in the fence, therefore it was never completed and enclosed. The equipment and dumpsters could be relocated to the shopping center parking lot however, it would then be in view of the neighboring residences.

The property is zoned R-1 but it is for practical purposes and as transitional property between the shopping center and the single family houses. Mr. Moore has operated his business professionally and uneventfully for nearly three decades. He is willing to reduce the fence area, complete the perimeter of the fence, and commit to only uses that are in direct support of the shopping center and the drainage field. Mr. Taylor submitted a sketched out plat showing the reduced property changes they would be willing to make and discussed it.

Mr. McPherson asked what equipment or vehicles were stored on the property. Mr. Taylor replied that they will only store what is in direct support of the shopping center and drainage field and all other equipment will be removed.

Vice Chairman Ribble called for speakers to the appeal and the following came forward: Martin Jones, 796 Stephanie Circle, Great Falls, Virginia; Peter Zimmerman, 10125 Nudra Drive, Great Falls, Virginia; Richard Peters, representing Great Falls Citizen Association. They submitted pictures to the Board showing the various equipment that has been stored on the property and the safety hazard they present. They stated that the property generates noise, the fence is unsightly and that they are being faced with a storage yard for commercial equipment. A petition was submitted from the area residents in opposition of the appeal.

Mr. Shoup stated that in respect to Mr. Taylor's proposal to reduce the storage area and screen it, such a proposal still would not comply with the Zoning Ordinance Provision and therefore he can not support such a proposal.

In rebuttal, Charlie Runyon, Wilmington, North Carolina, stated that he worked with Mr. Moore for five

years on making this parcel the future site of the Great Falls Post Office. Over that time he has met with the homeowners association to discuss that some zoning change must take place for this parcel in the future and specific uses that may or may not be utilized.

Mr. Runyon stated that the second issue is the equipment being stored on the site. He discussed what equipment was being stored and how each of them supported the septic field. He stated that Mr. Moore has cleaned up the yard, pulled out the debris, and is removing the junk material.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel asked Mr. Runyon that if the property was going to be used as a future post office site what would happen to the septic field. He responded that the post office is only going to use a part of the site and Mr. Moore wanted to continue to use the other part for the storage of the maintenance equipment for the shopping center.

Mr. Pammel stated that the site has evolved from a parcel of land in 1978 for a septic field only into a contractors storage yard not associated with the activity of maintaining a shopping center. He made a motion to support the interpretation of the Zoning Administrator because the use is contrary to the Zoning Ordinance and the approved site plan from 1978. He also felt that some of these problems can be addressed by Mr. Moore where he works with the community and perhaps he would be willing to build an accessory shed to locate some of his equipment. Mr. McPherson seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Mr. Taylor asked the Board to clarify the suggestion of Mr. Moore constructing a shed to keep the equipment in support of the drain field and shopping center. Mr. Pammel replied that it would have to meet the interpretation of the Zoning Administrator. Mr. Taylor also asked them if the scope of their motion was intended to include the two dumpsters. Vice Chairman Ribble stated they upheld the appeal in its entirety.

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Page 112, September 19, 1995, (Tape 1), Scheduled case of:

8:00 P.M. STEPHEN C. & REBA I. ELMORE, APPEAL 95-Y-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is keeping 3 adult dogs on a lot containing 8,589 sq. ft. of land in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 14436 N. Slope St. on approx. 8,589 sq. ft. of land zoned R-3. Sully District. Tax Map 44-3 ((9)) (3B) 27.

Vice Chairman Ribble stated that he had a letter from the applicant requesting a withdrawal. Mr. Pammel made a motion to accept the withdrawal and Mr. McPherson seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 112, September 19, 1995, (Tape 1), Scheduled case of:

8:00 P.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL. DEF. FROM 2/28. DEF. FROM 4/27 IN ORDER TO HEAR CONCURRENTLY WITH A 94-H-041,

Page 113, September 19, 1995, (Tape 1), TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039, continued from Page 112

A RELATED CASE. DEFERRED FROM 5/23 FOR DECISION ONLY. DEF. FROM 6/27.
DEF. FROM 9/12 FOR DECISION ONLY)

Mr. Pammel stated that he had a letter from the applicant requesting a withdrawal. Mr. Pammel made a motion to accept the withdrawal and Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 113, September 19, 1995, (Tape 1), Scheduled case of:

Request for Reconsideration for
John LeFevere, VC 95-H-070

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board Members that there was an error in the staff report regarding John LeFevere VC 95-H-070. The staff report stated the variance was to a front lot line when it should have been called a side lot line. A front lot line would have required 15 feet setback for the basketball standard, when a side yard requires 12 feet. Vice Chairman Ribble stated that it would not have made a difference since the basketball standard was in the easement. Mr. Dively moved to deny request for reconsideration and Mr. McPherson seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 113, September 19, 1995, (Tape 1), Scheduled case of:

Approval of Resolutions from
September 12 and September 14, 1995 meetings

Mr. Dively moved to adopt the LeFevere Resolution, VC 95-H-070, with the deletion of three lines in Paragraph 8 that states, "...basketball standards were close to the bottom of the Board's list of things that are necessary, compared to garages or other additions and other types of accessory structures and uses of the property."

Mr. Pammel adopted the Spencer Resolution, SP 95-Y-039, and suggested that Zoning Enforcement give the applicant six months to find a home for one of the dogs. The other Board members indicated agreement.

Mr. Ribble adopted the Lee Graham Corporation Resolution, SP 95-P-041, with the deletion of paragraphs D and E from development condition 6 relating to the approval of parties. He also adopted the Calvary Road Baptist Church Resolution, SPA 84-L-071-4, having added language to development condition 6 that states, "... their maximum daily enrollment shall be 240 until such time they obtain their Non-Rup; add language to condition 12 which states, "... transitional screening as prorated to the ten foot wide area."

Mr. McPherson adopted Sleepy Hollow Preschool Resolution, SPA 81-M-008-2, with the deletion of conditions 5 and 6 relating to the adjustment of the number of employees and students.

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Page 113, September 19, 1995, (Tape 1), Scheduled case of:

Request for Appeal Acceptance
Daniel T. Horseman

Mr. McPherson motioned to accept the Daniel T. Horseman Appeal request to be scheduled for December 5, 1995. Mr. Pammel seconded the motion which carried with a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 114, September 19, 1995, (Tape 1), Scheduled case of:

Request for Appeal Acceptance
Davin and Patricia Charlton

Mr. McPherson motioned to accept the Davin and Patricia Charlton Appeal request to be scheduled for December 12, 1995. Mr. Pammel seconded the motion which carried with a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 114, September 19, 1995, (Tape 1), Scheduled case of:

Request for Appeal Acceptance
Eli M. Rosenbaum and Cynthia Barvin


Mr. McPherson motioned to accept the Eli M. Rosenbaum and Cynthia Barvin Appeal request to be scheduled for December 12, 1995. Mr. Pammel seconded the motion which carried with a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.


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

Minutes by: Teresa M. Wang

Approved on: November 21, 1995


Betsy S. Huff, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 26, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:12 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 115, September 26, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NICHOLAS J. HILGERT, JR., VC 95-B-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from side lot line such that side yards total 11.4 ft. and six ft. high fence to remain in the front yard. Located at 5302 Crown Point Rd. on approx. 13,516 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-3 ((6)) 434.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sharon Hilgert, 5302 Crown Point Road, Burke, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 2.9 feet to the minimum side yard requirement and a variance of 8.6 feet to the total minimum side yard requirement.

Ms. Hilgert said they purchased the house with the existing two-car carport in 1972 and would now like to enclose the carport into a garage. She noted that if the lot was not pie-shaped they probably would not need the variance and pointed out that all the other houses, with the exception of two, have garages. Ms. Hilgert said during this process they decided to install a six foot high fence with a four foot high fence to lessen the noise level from the traffic on Burke Road. She said they were unaware of the County regulations and added that Lake Braddock Community Association had approved the request for the fence.

In response to a question from Chairman DiGiulian, Ms. Hilgert said the garage would be no closer to the lot line than the existing carport.

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

Mr. Hammack made a motion to grant VC 95-B-077 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 19, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-077 by NICHOLAS J. HILGERT, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.1 feet from side lot line such that side yards total 11.4 feet and six foot high fence to remain in the front yard, on property located at 5302 Crown Point Road, Tax Map Reference 69-3((6))434, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 13,516 square feet.
4. The applicant has satisfied the nine required standards for granting variances.
5. With respect to the addition, the applicant is simply enclosing an existing carport. The variance request is minimal and will not change the zoning district in any way. There is no other location where a garage addition or carport could be placed on the lot that would not create a lot of problems because of the topography, and the applicant's request will create virtually none.
6. With respect to the fence, the applicant presented good testimony to justify the 6 foot fence. The property is at a major intersection that experiences backup from vehicular traffic. The road has been raised so that it is above the rear yard of the subject property which impacts the applicant's privacy as shown in the photographs submitted by the applicant. Although Burke Road is not classed as a major thoroughfare under the Comprehensive Plan, it is common knowledge that the road carries a large amount of traffic that justifies the fence.

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition and fence shown on the plat prepared by Coldwell, Sikes & Associates dated May 18, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 117, September 26, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RAJAI ZUMOT, VC 95-D-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 140.0 ft. from right-of-way line of Interstate 495. Located at 7428 Old Dominion Dr. on approx. 1.46 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 72C.

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

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenleaf and noted that staff had carried forward the development conditions previously imposed with respect to noise attenuation. She said the applicant was requesting a variance of 60 feet..

Mr. Zumot said when he purchased the property he was unaware that the variance had expired. He asked the BZA to approve the variance based upon the same justification as the previous variance since the circumstances on the property remain the same.

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

Mr. Pammel made a motion to grant VC 95-D-081 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 19, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-081 by RAJAI ZUMOT, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 140.0 feet from right-of-way line of Interstate 495, on property located at 7428 Old Dominion Drive, Tax Map Reference 21-3((1))72C, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.46 acres.
4. The Board of Zoning Appeals previously approved a variance, VC 87-D-014, on the subject property and the circumstances or conditions have not changed since that time and this request is simply for a re-approval of that variance.

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

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

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

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

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

1. This variance is approved for the location of the specific dwelling shown on the plat prepared by VIKA Incorporated dated March 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. Mitigation measures must be provided to achieve interior noise levels no greater than 45 dBA Ldn.

Page 119, September 26, 1995, (Tape 1), RAJAI ZUMOT, VC 95-D-081, continued from Page 118

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 119, September 26, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BRENDAN P. & CHRISTINA A. KENNEDY, VC 95-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from front lot line. Located at 7409 Windy Hill Ct. on approx. 16,547 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 30-1 ((26)) 5.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Elaine Jensen, Staff Coordinator, with the Special Exception and Rezoning Branch, Zoning Evaluation Division, who would be presenting the next two cases. The BZA acknowledged Ms. Jensen.

Chairman DiGiulian noted that the notices were not in order in this case. Ms. Jensen suggested December 5, 1995, at 9:00 a.m. Mr. Ribble made a motion to defer the application to the date and time suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 119, September 26, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JAMIE LIEBMAN, SP 95-Y-045 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain lots to permit construction of addition 16 ft. 2 in. from side lot line. Located at 15411 Cedarhurst Ct. on approx. 14,223 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 53-1 ((3)) (5) 112.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jamie Liebman, 15411 Cedarhurst Court, Centreville, Virginia, replied that it was.

Elaine Jensen, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She said the applicant was requesting a modification of 3 feet 10 inches to the minimum yard requirements.

Ms. Liebman said she would like to construct a screened porch on the existing deck and noted that the setbacks do meet the R-2 (Cluster) zoning prior to the lot being changed to RC. She said the addition will not adversely impact the neighbors.

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

Mr. Ribble made a motion to grant SP 95-Y-045 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 19, 1995.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-045 by JAMIE LIEBMAN, under Section 8-913 of the Zoning Ordinance to permit modification to certain lots to permit construction of addition 16 feet 2 inches from side lot line, on property located at 15411 Cedarhurst Court, Tax Map Reference 53-1((3))(5)112, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS, AND AN.
3. The area of the lot is 14,223 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standards for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat certified by Charles P. Johnson & Associates, P.C., dated February 2, 1993, revised by Jamie Liebman, dated June 26, 1995, submitted with this application and not transferable to other land.
3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
4. The addition shall be architecturally compatible with the existing dwelling.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without

notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. LAWRENCE A. BLAKE, JR., VC 95-P-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line and rear lot line. Located at 3114 Covington St. on approx. 22,764 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's father and joint owner, Lawrence A. Blake, Sr., replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She said the accessory structure was proposed to be 12.3 feet high, thus a variance of 6.3 feet was required for the minimum rear yard and 14.0 feet was required for the minimum side yard.

Mr. Blake said the proposed garage will provide much needed storage space, the two existing sheds that have greatly deteriorated will be removed, and the proposed structure will provide security for the vehicles. He said if the proposed garage is moved further into the yard it will require the removal of two large oak trees which they would prefer not to do.

Mr. Ribble noted that the applicant's statement of justification cited topographical problems on the lot. Mr. Hammack and the speaker discussed where the house on Lot 9 was sited. Mr. Kelley noted that the BZA had received a letter in support of the request from the adjacent neighbor, David Lynhart, who would be the most impacted.

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

Mr. Kelley made a motion to grant VC 95-P-082 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 19, 1995.

Mr. Hammack said he would oppose the motion because the addition is very large and he believed the addition could be shifted to another location to require a lesser variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-082 by LAWRENCE A. BLAKE, JR., under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 feet from side lot line and rear lot line, on property located at 3114 Covington Street, Tax Map Reference 48-4((4))9, Mr. Kelley moved that the

Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,764 square feet.
4. The applicant has met the necessary requirements.
5. The addition is large; however, the subject property is a reasonably large and the proposed structure will not be located close to any existing dwelling.
6. The subject property has an exceptional shape which necessitates the need for the variance to the rear.
7. The neighbor who will be the most impacted has written a letter in support of the request.

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

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

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

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

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

limitations:

1. This variance is approved for the location of the specific accessory structure (combined garage, woodshop, and storage) shown on the plat prepared by Dewberry and Davis, dated January 23, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained for the accessory structure prior to any construction and final inspections shall be approved.
3. The accessory structure shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 123, September 26, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CHILDREN'S NATIONAL MEDICAL CENTER, SP 95-H-059 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit a seasonal commodity (haunted house). Located at 11922 Freedom Dr. on approx. 33.60 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((1)) 12E. (OUT OF TURN HEARING REQUESTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Maggie Parker, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. Staff concluded that, with the implementation of the Proposed Development Conditions, the proposed use would be in harmony with the recommendations of the Comprehensive Plan, would satisfy all the General Standards and the Standards for all Group 8 Uses, and recommended approval.

Ms. Parker said during these times of health care crisis and uninsured care, fund raising is very critical and noted that the "haunted house and autumn adventure" last year had over 16,000 attendees and raised approximately \$70,000 which went directly to the hospital. The time necessary for put-up and take-down time causes the use to run over the allowed 21 days, therefore the special permit request. Ms. Parker asked that the BZA approve the use for five years and waive the eight-day waiting period.

Chairman DiGiulian called for speakers in support of the application. Randa Mendenhall, Special Events Manager for Reston Town Center, and Joe Donovan representing the property management firm of Reston Town Center, came forward and wholeheartedly supported the request.

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

Mr. Dively asked if Reston Land Corporation was also an applicant. Ms. Langdon said they were listed on the affidavit. Mr. Dively then proceeded to make a motion to grant SP 95-H-059 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 19, 1995. The BZA also waived the eight-day waiting period.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-H-059 by CHILDREN'S NATIONAL MEDICAL CENTER, under Section 6-303 of the Zoning Ordinance to permit a seasonal commodity (haunted house), on property located at 11922 Freedom Drive, Tax Map Reference 17-1((1))12E, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 33.60 acres.
4. The event has been well organized, the trial run went well, and there is no reason not to approve the request for five (5) years.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-404 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Urban Engineering & Associates, dated July 1993 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The haunted house use at the subject site shall be limited to a time period during October and the beginning of November, annually, including all site preparation and restoration time before and after the production. The Special Permit is approved for five (5) successive years provided the use is operated in accordance with these conditions and there are no parking violations or other verified violations or disturbances to the surrounding area.
5. The hours of operation for the haunted house shall be limited to 7:00 p.m. until 11:00 p.m., Friday, Saturday and Sunday evenings.
6. The applicant shall provide an adequate number of parking spaces to accommodate patrons which shall be a minimum of 784 spaces. All parking shall be clearly designated and access to parking clearly signed.

- 7. There shall be no carnival rides or games operated on-site.
- 8. All trash and debris shall be contained on the site and shall be picked up daily and placed in closed containers that will be emptied weekly.
- 9. Any signs, banners or advertising must have prior approval from the Zoning Enforcement Branch. For further information, please contact 324-1300.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 26, 1995. This date shall be deemed to be the final approval date of this special permit.
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Page 125, September 26, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CENTREVILLE BAPTIST CHURCH, SPA 86-S-054 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 86-S-054 for church and related facilities to permit increase in land area, seating capacity, parking spaces, building additions and change in development conditions. Located at 15100 Lee Hwy. on approx. 34.45 ac. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((1)) 12; 64-2 ((1)) 35 and 36; 64-2 ((3)) 10, 11, 12, 12A, 12B and 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Frank McDermott, with the firm of Hunton & Williams, 15100 Lee Highway, Centreville, Virginia, replied that it was.

Marilyn Anderson, Staff Coordinator, presented the staff report and said that staff believed that the adjacent properties will be impacted visually by: 1) additional building bulk proposed to be located 50 feet from adjacent residences, 2) transitional screening yard along the northern lot line being reduced from 50 feet to 35 feet, 3) construction of 693 surface parking spaces above the number of spaces required by the Zoning Ordinance to park 1,700 seats, 4) location of the additional parking atop the utility and gasoline easements which cannot be sufficiently screened, and 5) location of parking spaces atop the gasoline easement contrary to Comprehensive Plan policy. Therefore, it was staff's recommendation that this application be denied as proposed.

Mr. McDermott submitted a letter dated September 25, 1995 to the BZA which outlined discrepancies that he believed were contained in the staff report and said a copy had been faxed to staff late yesterday evening. Mr. Pammel asked staff to comment on the letter at the end of the public hearing.

Mr. McDermott introduced John Echter, the pastor of Centreville Baptist Church; Bert McGaughey, Administrator of Centreville Baptist Church; and noted the presence of several members of the congregation. He noted that Supervisor Elaine McConnell was also present to speak on behalf of the church. Mr. McDermott called the BZA's attention to the view graph and discussed the proposed changes, the zoning, and uses that surround the subject property.

The applicant's architect, Paul Erickson with LeMay Associates, came forward and explained the proposed expansion using the architectural drawing.

Chairman DiGiulian asked Supervisor McConnell if she would like to speak. Supervisor Elaine McConnell supported the application and said that she had a personal interest in the case since she had served as

Page 126, September 26, 1995, (Tape 1), CENTREVILLE BAPTIST CHURCH, SPA 86-S-054, continued from Page 125)

supervisor in that area for 8 years and during that time has seen the church grow dramatically. She added that Supervisor Michael Frey also supported the request although he could not be present.

Rev. Robin Bromhead, Pastor of the Presbyterian Church, said his church was located directly across the street and that he supported the expansion.

There was no opposition and Chairman DiGiulian asked staff to comment on the letter presented by Mr. McDermott at the beginning of the public hearing.

At Mr. Pammel's request, Ms. Anderson addressed the issues by the applicant's attorney in the letter presented to the BZA at the beginning of the public hearing and justified staff's position. A discussion took place between the BZA and staff regarding the allowed uses in the EQC area. In response to a question raised by Mr. Hammack with respect to the number of seats, Mr. McDermott explained that the total seating capacity would be 1,700 with 228 in the chapel. He added that the church has no plans for a day care center or special education program as stated in the statement of justification. Mr. McDermott said based on the church's inability to park on the utility easements, the parking spaces would be readjusted and planted islands would be added resulting in more green space.

Following further discussion, Mr. Hammack questioned if revised plats were necessary prior to the BZA taking action on the application. Ms. Anderson suggested that perhaps the case could be deferred for one week to allow staff an opportunity to review the revisions. Mr. McDermott agreed to leave the drawing used in his presentation with staff.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 86-S-054 for the reasons noted in the Resolution and subject to the Development Conditions submitted by the applicant dated September 25, 1995 with the submission of revised plats.

Mr. Pammel seconded the motion and added that he believed applications that are located in such highly developed urban areas should be judged on what currently exists in the area and not what the designation is under the Comprehensive Plan.

Following discussion among the BZA, Mr. Hammack said he believed staff should have an opportunity to review the plat. Mr. McDermott said a revised plat could be submitted to staff by the end of the week.

The motion carried by a vote of 6-0 with Mr. McPherson being absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application Amendment SPA 86-S-054 by CENTREVILLE BAPTIST CHURCH, under Section 3-C03 of the Zoning Ordinance to amend SP 86-S-054 for church and related facilities to permit increase in land area, seating capacity, parking spaces, building additions and change in development conditions, on property located at 15100 Lee Highway, Tax Map Reference 53-4((1))12; 64-2((1))35 and 36; 64-2((3))10, 11, 12, 12A, 12B and 13, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 34.45 acres.
4. The additional land area is an important addition with the FAR (Floor Area Ratio) certainly being low and within acceptable limits of the Code.
5. The church is a large facility, but it does not impact directly on neighboring communities as there is no internal circulation through the residential communities to enter/exit the site.
6. The subject property is on a four lane road which will eventually be widened to six lanes and if this type of facility cannot be located on a 34 acre site adjacent to a six lane road, there is no place in Fairfax County where it could be located.
7. The Board of Zoning Appeals heard the initial request in 1987 which included a proposal for Phase I and II and although this is an enlargement, it is satisfied by the increase in the land area.

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

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

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

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by LeMay Associates, dated May 24, 1995, as revised through September 28, 1995 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by DEM. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment plat and these development conditions.
5. The maximum seating capacity shall be limited to 1,700.
6. There shall be a total maximum of 1,128 parking spaces provided and all parking shall be on site.
7. Transitional screening shall be provided in accordance with the following:
 - As depicted on the Special Permit Amendment Plat "Northern Boundary Landscape Plan," supplemental evergreen plantings that buffer the building and parking from the adjoining residential uses shall be placed within a minimum 35 foot wide planting area along the northern lot line to satisfy the transitional screening requirement. Subject to Virginia Power approval, within the Virginia Power transmission line easement, a 3 foot to 5 foot high berm and supplemental plantings that do not exceed the maximum height limitations of the Virginia Power Company shall be placed between the parking lot and the northern lot line. Subject to Columbia Gas approval, an 18 inch high berm shall be provided along the northern lot line within the Columbia Liquefied Gas pipeline easement, with shallow root planting if permitted. East of the Columbia Natural Gas pipeline easement, the existing vegetation shall be retained to satisfy the transitional screening requirement.

- Along the southern lot line west of the Virginia Power transmission line easement, the existing vegetation with supplemental evergreen shrub plantings to fill in gaps shall be placed between the parking lot and the south lot line in order to satisfy the transitional screening requirement. Within the Virginia Power transmission line easement, supplemental plantings that do not exceed the maximum height limitation approved by the Virginia Power Company shall be placed between the parking lot and the south lot line. Subject to Columbia Gas approval, an 18 inch high berm shall be provided within the Columbia Liquified Natural Gas pipeline easement. East of the farm pond, the existing vegetation shall satisfy the transitional screening requirement.
- Along the western lot line, the existing vegetation shall be retained within a 50 foot wide planting area to satisfy the transitional screening requirement.
- Along the eastern lot line, the existing plantings shall satisfy the transitional screening requirements.

All of the above plantings and existing vegetation, and the size, type and quantity of all proposed supplemental plantings, shall be shown on a landscaping plan that is approved by the Urban Forestry Branch, DEM, at site plan approval in order to reduce the visual impact of the use from the adjacent residential uses.

8. The barrier requirement shall be waived along all lot lines except that the existing fencing along the northern lot line shall be maintained.
9. The following transportation improvements shall be provided:
 - All temporary grading and construction easements parallel to the right-of-way necessary for any future improvement of Lee Highway shall be provided at site plan approval, as determined by the Director of the Department of Environmental Management (DEM).
 - Right and left turn lanes into the new eastern site entrance shall be provided to VDOT standards. Right-in and -out turn lanes at the existing western entrance shall be provided to VDOT standards.

At such time as the westernmost median break is closed, the applicant shall erect signs indicating that the westernmost exit is a right-turn only and shall instruct parishioners to use the easternmost entrance for left turns into and out of the site.

10. The outdoor play area shall be shifted so that it is located outside of the transitional screening yard.
11. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
12. The area within the Environmental Quality Corridor (EQC) shall be preserved in undisturbed open space, except for necessary utility construction, as approved by the Director of the Department of Environmental Management (DEM). There shall be no clearing of any vegetation in the EQC, except for the removal of dead or dying trees and shrubs as approved by the Urban Forestry Branch, DEM. The area within the EQC shall not be used for active recreational purposes.
13. A minimum of fifty percent (50%) of the site shall remain in open space.

- 14. The sidewalks on the south and west of the building shall be connected.
- 15. Prior to site plan approval, applicant shall be permitted to revise the parking lot layout to remove parking spaces from the Columbia Natural Gas easement, to extend the limits of clearing in the southeast portion of the parking area in such a fashion as to compensate for the lost spaces while minimizing the additional clearing of trees, and to provide landscaped islands, at the applicants's sole discretion, in those areas of the Columbia Natural Gas easement where the parking spaces have been removed.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, sixty (60) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1995. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:43 a.m. and reconvened at 11:00 a.m.

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Page 129, September 26, 1995, (Tape 2), Scheduled case of:

9:30 A.M. GERHARD SAUER, SP 95-H-028 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home professional office. Located at 11550 Southington Ln. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 11-2 ((5)) 101. (MOVED FROM 7/18/95 AT APP.'S REQ.)

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff believed this use could be accommodated by a Home Occupation Permit now that the applicant has reduced the amount of square footage involved in the use and the number of employees to one who will reside on site. She suggested that the case be deferred for one week to allow the applicant to seek administrative approval for a Home Occupation Permit from the Zoning Administrator. The applicant agreed with the deferral.

Mr. Kelley moved to defer the case for one week. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 129, September 26, 1995, (Tape 2), Scheduled case of:

9:30 A.M. JOHN F. AND ANNE M. LEFEVERE, APPEAL 95-H-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a basketball standard less than 15 ft. from a pipestem driveway in violation of Par. 12C of Sect. 10-104 of the

Zoning Ordinance. Located at 12457 Wendell Holmes Rd. on approx. 17,562 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((8)) 33. (RESCHEDULED FROM 5/30)

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the memorandum dated September 18, 1995, and noted that the BZA had considered and denied a variance application for the same use.

The appellant, John Lefevere, 12457 Wendell Holmes Road, Herndon, Virginia, presented the arguments forming the basis for the appeal and raised a constitutionality question of denial of equal protection and due process. He submitted documentation for the BZA's consideration and submitted photos of surrounding properties which also have basketball standards.

Mr. Dively pointed out that the BZA was not allowed to discuss constitutional issues. Mr. Lefevere said he believed the BZA was acting under "police authority" under State by delegation to the County, therefore it falls under the State law and that he was entitled to due process.

Mr. Lefevere said there was confusion as to whether the standard is located in the side or front yard and that he believed the standard was safely set back from the street.

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

Terri Blodger, the appellant's next door neighbor, said the street is a dead end street and that she did not believe the standard was a hazard.

Martha Nagel, 12330 Lawyers Road, Vienna, Virginia, owner of Lot 5, said she did not object to the standard one way or the other because of the screening she could not see the standard, but as a generality she did believe in complying with whatever regulations there might be.

Carol Ann Rybicki, 12459 Wendell Holmes Road, Herndon, Virginia, owner of Lot 35, said she had appeared at the variance public hearing in opposition and that she believed the standard presented a safety hazard. She added that she did not object to the standard, but that she would like to see it relocated.

In rebuttal, Mr. Lefevere reiterated his earlier comments about his being denied equal protection and disagreed with Ms. Rybicki.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to uphold the Zoning Administrator's determination. Mr. Hammack seconded the motion. Mr. Dively said he would support the motion and that he believed the constitutionality issue should be addressed in the Circuit Court. Mr. Hammack said there was nothing to show the Zoning Administrator's determination is incorrect. The motion carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 130, September 26, 1995, (Tape 2), Scheduled case of:

9:30 A.M. BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a freestanding sign advertising an individual enterprise within a shopping center, in violation of Zoning Ordinance provisions. Located at 6461 Edsall Rd. #305 on approx. 5.25 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7A. (DEF. FROM 5/23 AND 7/6 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, said this appeal was deferred the first time for notices due to a change in management and the second deferral was at the appellant's request due to her child being sick in Philadelphia. The appellant informed staff last week that her child passed away two weeks ago;

Page 131, September 26, 1995, (Tape 2), BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010, continued from Page 130)

therefore, she did not do the notices. Mr. Shoup said given the circumstances he would suggest that the case be deferred to November 14th at 9:30 a.m.

Mr. Kelley said he had been the one who supported no further deferrals, but under the circumstances that he would move to defer the case to the date and time suggested by staff. Mr. Hammack seconded the motion and asked that staff convey to the appellant that the issue needs to be resolved. Mr. Shoup assured the BZA that staff would continue to work with the appellant. The motion carried by a vote of 4-0 with Mr. Dively and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 131, September 26, 1995, (Tape 1), Scheduled case of:

10:00 A.M. SOUTHWESTERN BELL MOBILE SYSTEMS, INC. D/B/A CELLULAR ONE WASHINGTON/BALTIMORE, APPEAL 95-D-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's denial of an extension of TSP 94-D-242 for a temporary mobile based telecommunications testing facility, resulting in the expiration of TSP 94-D-242 and the requirement to remove existing antennas. Located at 6251 Old Dominion Dr. on approx. 12.99 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 ((1)) 83.

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the memorandum dated September 19, 1995.

The appellant's attorney, Paul Gallagher, presented the appellant's position as stated in the statement wherein he believed that the extension of the Temporary Special Permit (TSP) should have been granted and that the Zoning Administrator was incorrect in her determination. He asked that the BZA overturn the determination and grant the appellant a six month extension.

A discussion took place between the BZA and the speaker with regard to how long the antennas had been in place. Mr. Gallagher said approximately one year, but added that he could not address the issue of whether the antennas had been operational once the TSP was denied. Mr. Shoup said staff only suspected that the antennas had continued to operate, since the appeal had "stayed" any further enforcement.

In response to a question from Mr. Pammel, Mr. Gallagher replied there two sets of nine permanent antennas and one set of nine temporary antennas were on the site. He added that the appellant had already filed a special exception to add nine more antennas.

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

Mr. Pammel said it appeared that the appellant was merely going through the process of testing to determine if in fact they want to pursue a Special Exception Amendment to be heard by the Board of Supervisors.

Mr. Hammack said he believed there were conflicting provisions in the Ordinance but the Zoning Administrator does have the discretion whether to grant a TSP or extension.

The BZA and staff discussed the connection between the Special Exception use and the TSP. Chairman DiGiulian said he was not sure that the Special Exception limited the number of antennas on the site and did not prohibit testing. Mr. Shoup pointed out that the use was on a site with a Special Exception use and the conditions of that Special Exception are explicit as to the number of antennas; therefore, staff believed that the appellant's request conflicted with those conditions.

Following further discussion, Mr. Kelley said he believed the discussion was getting "far afield from the issue." He pointed out that the issue would be moot if the BZA deferred decision for approximately six weeks which would give the appellant the time that he was entitled to under a TSP. Mr. Kelley noted that the appellant had already had the full amount of time de facto.

Page 132, September 26, 1995, (Tape 1), SOUTHWESTERN BELL MOBILE SYSTEMS, INC. D/B/A CELLULAR ONE WASHINGTON/BALTIMORE, APPEAL 95-D-032, continued from Page 131)

Mr. Hammack made a motion to uphold the Zoning Administrator's determination in A-95-D-032. Mr. Kelley seconded the motion. Chairman DiGiulian said it has been staff's practice to let them continue as long as they are diligently pursuing a Special Exception application. Mr. Shoup said that was correct. The motion carried by a vote of 4-0 with Mr. Dively and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting. The decision became final on October 4, 1995.

Mr. Pammel asked that staff relay to the Planning Commission the BZA's concerns regarding the ability of a separate entity to do testing on a facility where there are existing approved facilities operating under Special Permits.

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Page 132, September 26, 1995, (Tape 1), Scheduled case of:

10:00 A.M. RENAISSANCE HOUSING CORP. OF VA., INC., APPEAL 95-Y-034 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected two freestanding subdivision identification signs without obtaining building and sign permit approvals and which exceeds the maximum allowable sign area permitted under the Zoning Ordinance. Located at 12521 Nathaniel Oaks Dr. on approx. 1.07 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((15)) 1.

Mr. Pammel made a motion to grant the appellant's request to withdraw the appeal. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Dively and Mr. Ribble not present for the vote. Mr. McPherson was absent from the meeting.

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Page 132, September 26, 1995, (Tape 1), Action Item:

Approval of June 13, 1995 Minutes

Mr. Hammack made a motion to approve the minutes as submitted. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were not present for the vote. Mr. McPherson was absent from the meeting.

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Page 132, September 26, 1995, (Tape 1), Action Item:

Approval of September 19, 1995 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted by staff. Hearing no objection, the Chair so ordered.

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Page 132, September 26, 1995, (Tape 1), Action Item:

Withdrawal of A. Budd Fenton, Trust Fund Number One, Appeal 95-V-036

Mr. Pammel made a motion to allow the appellant's request to withdraw A 95-V-036. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were not present for the vote. Mr. McPherson was absent from the meeting.

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Page 133, September 26, 1995, (Tape 1), Action Item:

Revised Special Permit Plats Memorandum from
Barbara A. Byron, Director Zoning Evaluation Division

Mr. Pammel made motion to endorse the proposed procedures for future applications. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were not present for the vote. Mr. McPherson was absent from the meeting.

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Page 133, September 26, 1995, (Tape 1), Action Item:

Scheduling Meeting Dates During the Month of August Memorandum from
James P. Zook, Director, Office of Comprehensive Planning

Mr. Pammel said he believed that Mr. Zook's memorandum addressed some of the issues, but that it did not raise the concerns raised with regard to the amount of time involved needed by the BZA to review the information, especially with the number of appeals that are now being filed. He made a motion to schedule one additional day meeting in the middle week of August and schedule the first September meeting on the Tuesday immediately following Labor Day rather than the second week.

It was the consensus of the BZA to defer discussion until October 3, 1995 as an After Agenda Item.

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As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Betsy S. Hurtt

Approved on: January 2, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 3, 1995. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 135, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GERHARD SAUER, SP 95-H-028 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home professional office. Located at 11550 Southington Ln. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 11-2 ((5)) 101. (MOVED FROM 7/18 AT APP.'S REQ.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the applicant had submitted a written request for withdrawal of the application because he was able to obtain a Home Occupation Permit which is a use by right in the residential district.

Mr. Hammack moved to allow the withdrawal. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 135, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HARVEY L. LEVIN, VC 95-M-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (carport) 5.0 ft. from side lot line. Located at 6317 Hillsborough Dr. on approx. 25,855 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((7)) 77.

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

David Hunter, Staff Coordinator, presented the staff report dated September 26, 1995, outlining staff's position and stating that a variance of 2.0 feet was being requested.

Mr. Levin presented his request and statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Hammack moved to grant VC 96-M-083 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-083 by HARVEY L. LEVIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition (carport) 5.0 feet from side lot line, on property located at 6317 Hillsborough Drive, Tax Map Reference 61-1((7))77, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 25,855 square feet.
4. The lot is narrow and the house is at a slight angle to the property line.
5. The variance requested is minimal and is only for a corner of the property; it will not impact upon the zoning district and is permissible under the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the specific carport shown on the plat prepared by Donald R. Horn, Architect dated May 1, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 137, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. FRANCO & DANIELLE LUCCA, SP 95-D-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 14.6 ft. from side lot line. Located at 829 Dolley Madison Blvd. on approx. 40,419 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 104C. (Concurrent with VC 95-D-084).

9:00 A.M. FRANCO & DANIELLE LUCCA, VC 95-D-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line. Located at 829 Dolley Madison Blvd. on approx. 40,419 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 104C. (Concurrent with SP 95-D-042).

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mrs. Lucca complied.

David Hunter, Staff Coordinator, presented the staff report dated September 26, 1995, outlining staff's position and stating that a variance of 5.4 feet was being requested.

Mrs. Lucca presented the applicants' request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Pammel noted that the staff report said that a building permit had been issued for a carport within 15 feet of the side property line and asked when the carport had been enclosed. Mrs. Lucca said she believed that occurred in 1979 and they purchased the property only four years ago; the previous owners had applied for a carport permit and then proceeded to build an enclosed garage, for which she ultimately had to pay a fine, She was not aware of that situation at the time the property was purchased by her.

Mr. Hammack referenced the second addition stating that, except for a little overhang towards the adjoining property line, it appeared that the overhang would be over the existing structure. Mrs. Lucca said that was how the drawings depicted it.

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

Mr. Pammel moved to grant SP 95-D-042 and VC 95-D-084 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-042 by FRANCO & DANIELLE LUCCA, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 14.6 feet from side lot line, on property located at 829 Dolley Madison Boulevard, Tax Map Reference 31-2((1))104C, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified dwelling and stairs shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gallifant, Hawes & Jeffers, dated May 30, 1995, revised June 28, 1995 submitted with this application.

Page 139, October 3, 1995, (Tape 1), FRANCO & DANIELLE LUCCA, SP 95-D-042 and VC 95-D-084, continued Page 138

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

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-084 by FRANCO & DANIELLE LUCCA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from side lot line, on property located at 829 Dolley Madison Boulevard, Tax Map Reference 31-2((1))104C, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is approximately 40,419 square feet.
4. The findings of fact are the same as in SP 95-D-042, heard concurrently.
5. The non-compliance occurred through no fault of the current owners, but was the result of an act by a previous owner, who enclosed the garage in violation of the side yard requirements specified in the Ordinance.
6. The lot has an unusual configuration and the location of the house on the lot at the very extreme corners of the property makes it difficult to locate additions in any location other than that proposed by the applicant.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Gallifant, Hawes & Jeffers dated May 30, 1995, and revised June 28, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 140, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DAVID W. MCFADDIN, VC 95-V-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 13.8 ft. Located at 7863 Godolphin Dr. on approx. 10,579 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-4 ((6)) 220.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. McFaddin complied.

Susan Langdon, Staff Coordinator, presented the staff report dated September 26, 1995, outlining staff's position. She stated that a variance of 1.0 foot to the minimum side yard and 6.2 feet to the minimum total side yard requirements was being requested.

Mr. McFaddin presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 95-V-089 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

The Board also moved to waive the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-089 by DAVID W. MCFADDIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line such that side yards total 13.8 feet, on property located at 7863 Godolphin Drive, Tax Map Reference 98-4((6))220, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is approximately 10,579 square feet.
4. The findings of fact are as reflected in the staff report; specifically, this is a rather irregular lot, with narrow frontage and, since just a corner of the addition requires a variance, it would be appropriate to facilitate this request.

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

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

restrict all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of the specific garage shown on the plat prepared by R.C. Fields, Jr. & Associates, dated May 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspection shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. McPherson moved to waive the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 142, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DONALD M. & GLADYS M. LUND, VC 95-M-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.4 ft. from side lot line. Located at 6452 Eppard St. on approx. 20,909 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((9)) 3B.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Lund complied.

Susan Langdon, Staff Coordinator, presented the staff report dated September 26, 1995, outlining staff's position and stating that the request was for a 9.6-foot variance. She said that staff had received eight letters in support of the application.

Mr. Lund presented his request and statement of justification, previously submitted in writing and incorporated into the record. He referenced the original application requesting permission to build a Page

double garage, dated June 1994, which he said was rejected. He outlined the differences between the original and current applications. Mr. Lund submitted a plat from his neighbor, Mr. Papatillo, demonstrating that Mr. Papatillo's garage is 9.9 feet from the shared property line, which is closer to the property line than the garage which the applicant proposed to build.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-M-088 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Hammack commented on the application, stating that the property is in the R-1 District but is actually R-2 in size, creating limitations; from the photos, he noted that there also appear to be some topographical problems in the front yard. He said he believed Mr. Lund had made a good effort to seek a minimum variance and his proposal is similar to what already exists in the area.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-088 by DONALD M. & GLADYS M. LUND, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.4 feet from side lot line, on property located at 6452 Eppard Street, Tax Map Reference 51-3((9))3B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is approximately 20,909 square feet.
4. The applicant made a good-faith effort to cut down the size of the variance; the Board usually receives requests for oversized one- and two-car garages and this one is proposed to be undersized.
5. At first glance, the garage almost appears to be a breezeway, because of the manner in which the house is raised with steps to gain entrance from the garage.
6. Photos illustrated that it would be impractical to use the large back yard as a site for the accessory structure.

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

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Coldwell, Sikes & Associates, dated May 17, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page ~~144~~ October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR S. LEAHY, SP 95-M-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 1.6 ft. from rear lot line. Located at 6359 Eighth St. on approx. 2,077 sq. ft. of land zoned R-12. Mason District. Tax Map 72-3 ((22) 32.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Leahy complied.

Susan Langdon, Staff Coordinator, presented the staff report dated September 26, 1996, outlining staff's position. She stated that the applicant was requesting a variance of 18.4 feet.

Mr. Leahy presented his request and statement of justification, previously submitted in writing and incorporated into the report.

Mr. Hammack requested that Mr. Leahy show the Board a photograph of the proposed construction and where the screens were going to be placed. Mr. Leahy explained that he was planning to take out walls and replace them with screens.

Mr. Hammack referenced Mr. Leahy's comment that all of the units in the area which were built without a basement had a storage shed included as part of the original construction and asked staff if they that was true or not. Ms. Langdon said she did not know the answer to that question. Mr. Leahy said he had a picture of his neighbor's shed, right next to his shed. Mr. Hammack said he questioned the original legality of the sheds and said it appeared that Mr. Leahy had attached some new construction to the shed which, under the Ordinance, incorporated the shed into the house, by definition. Mr. Leahy presented photos which Mr. Hammack and Mr. Pammel said made the shed look higher than 8 feet.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to deny SP 95-M-048 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-048 by ARTHUR S. LEAHY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 1.6 feet from rear lot line, on property located at 6359 Eighth Street, Tax Map Reference 72-3((22))32, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicant is the owner of the land
2. The present zoning is R-12.
3. The area of the lot is approximately 2,077 square feet.
4. The application was not significantly different from the last time it came before the Board; it is still as major an incursion, as it previously was, at 1.6 feet.
5. The applicant was attempting to do much on too small a piece of property, which does not appear to have changed from the previous submission.
6. For all the reasons cited at the time of the previous submission, except that some of the construction reasons may not apply and because it is unclear how the presently proposed construction might proceed, the fact remains that the addition is still a major incursion into the back yard, and it was deemed appropriate to deny the request.

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

Page 146 October 3, 1995, (Tape 1), ARTHUR S. LEAHY, SP 95-M-048, continued from Page 145

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995.

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Page 146 October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PETER CONLON, VC 95-H-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8 in. from rear lot line. Located at 13230 Stable Brook Way on approx. 8,983 sq. ft. of land zoned PDH-16. Hunter Mill District. Tax Map 25-1 ((14)) (6) 47. (DEF. FROM 7/20/95 FOR NOTICES)

Chairman DiGiulian noted that the Board had a letter requesting withdrawal of the application.

Mr. Kelley moved to allow the withdrawal and entire Board concurred.

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Page 146 October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. P. WILLIAM, JR. & MARY FRANCES KIEFABER, SP 95-B-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.5 ft. from side lot line. Located at 4433 Naoma Ct. on approx. 11,220 sq. ft. of land zoned R-3 and WS. Braddock District. Tax Map 57-3 ((7)) 311. (Concurrent with VC 95-B-076). (MOVED FROM 9/14)

9:00 A.M. P. WILLIAM, JR. & MARY FRANCES KIEFABER, VC 95-B-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line. Located at 4433 Naoma Ct. on approx. 11,220 sq. ft. of land zoned R-3 and WS. Braddock District. Tax Map 57-3 ((7)) 311. (Concurrent with SP 95-B-043). (MOVED FROM 9/14)

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Kiefaber complied.

Susan Langdon, Staff Coordinator, presented the staff report dated September 26, 1995, outlining staff's position. She stated that the applicants were requesting a variance of 6.5 feet for the carport addition and a variance of 5.3 feet for the rear yard addition.

Mr. Kiefaber presented his request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Hammack moved to grant SP 95-B-043 and VC 95-B-076 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-B-043 by P. WILLIAM, JR. & MARY FRANCES KIEFABER, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.5 feet from side lot line, on property located at 4433 Naoma Court, Tax Map Reference 57-3((7))311, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified carport and porch addition shown on the plat submitted with this application and is not transferable to other land.

Page 148, October 3, 1995, (Tape 1), P. WILLIAM, JR. & MARY FRANCES KIEFABER, SP 95-B-043 and VC 95-B-076, continued from Page 147)

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by James H. Guynn, Certified Land Surveyor, dated May 16, 1995, revised June 9, 1995, submitted with this application.

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

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-076 by P. WILLIAM & MARY FRANCES KIEFABER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.7 feet from rear lot line, on property located at 4433 Naoma Court, Tax Map Reference 57-3((7))311, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 and WS.
3. The area of the lot is approximately 11,220 square feet.
4. The Board accepted the reasons set forth by the applicants as findings of fact; particularly, the sanitary sewer easement across the right rear of the property; and the photo shows some topographical conditions on the left side.
5. The applicants are constrained in where they can locate this addition and they have made a good case for having the request granted.

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

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

Page 149, October 3, 1995, (Tape 1), P. WILLIAM, JR. & MARY FRANCES KIEFABER, SP 95-B-043 and VC 95-B-076, continued from Page 148)

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by James H. Guynn, Certified Land Surveyor, dated May 16, 1995, revised June 9, 1995, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 149, October 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PAUL E. SCHMITT, VC 95-P-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft from side lot line. Located at 10009 Fair Oaks Rd. on approx. 21,941 sq. ft. of land zoned R-1. Providence District. Tax Map 37-4 ((3)) 18.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Schmitt complied.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 26, 1995, outlining staff's position. She stated that the applicant actually was requesting a 13-foot variance and that the figures in the staff report were incorrect.

Mr. Schmitt presented his request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Pammel moved to grant-in-part VC 95-P-086 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Ms. Kelsey reminded the Board that the revised plat must be submitted within thirty (30) days of the hearing date or the approval would be considered null and void and Mr. Pammel called the applicant's attention to that fact.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-086 by PAUL E. SCHMITT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet (**THE BOARD ALLOWED 10.0 FEET**) from side lot line, on property located at 10009 Fair Oaks Road, Tax Map Reference 37-4((3))18, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is approximately 21,941 square feet.
4. The lot is very narrow and, although zoned R-1, it meets the standards of the R-2 District in terms of minimal lot size; it would, therefore, be considered a non-conforming lot.

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

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

Page 151, October 3, 1995, (Tape 1), PAUL E. SCHMITT, VC 95-P-086, continued from Page 150

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Gallifant, Hawes & Jeffers dated May 30, 1995, and revised October 5, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.
4. A revised plat is required, reflecting the modification made by the Board to permit construction of the addition 10.0 feet from the side lot line instead of the 7.0 feet requested, and must be submitted within 30 days of the date of the hearing or the variance shall be considered null and void.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1995, the date the revised plat was approved by the Board. This date shall be deemed to be the final approval date of this variance.

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Page 151, October 3, 1995, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE B. & GEORGINE J. FARISH, VC 95-B-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 15.2 ft. Located at 4312 Wakefield Dr. on approx. 10,874 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((12)) 12.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and George B. Farish, 4312 Wakefield Drive, complied.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 26, 1996, outlining staff's position and stating that the applicant was requesting a variance of 2.5 feet to the minimum side yard and a variance of 8.8 feet to the total minimum side yard requirement. Ms. Kelsey said the figures in the staff report were incorrect but the application was advertised correctly.

Page 152, October 3, 1995, (Tape 1), GEORGE B. & GORGINE J. FARISH, VC 95-B-087, continued from Page 151)

Mr. Farish presented the request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. McPherson moved to grant VC 95-B-087 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Ribble stated that the lot lines appeared to converge to the rear of the property and only one corner would be impacted by the proposed garage.

Mr. Pammel remarked that he would have opted for less width in the garage, as he would have in the two preceding cases but, given the fact that the property is adjacent to a common access-way to the Homeowners Association property to the rear, the applicant basically is not impacting any private property to the north and the fact there is a real hardship involved, he would support the application.

Chairman DiGiulian noted that the average variance is 1.4 feet and that this is a very minor variance.

The Board also waived the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-087 by GEORGE B. & GEORGINE J. FARISH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.5 feet from side lot line such that side yards total 15.2 feet, on property located at 4312 Wakefield Drive, Tax Map Reference 70-1((12))12, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2, Cluster.
3. The area of the lot is approximately 10,874 square feet.
4. While the proposed location is close to the lot line, it is reasonable under the circumstances to approve the request, because of the configuration of the lot.

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

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

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

Page

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of the addition shown on the plat prepared by Kenneth W. White, Surveyor, dated June 15, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

Mr. McPherson moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 154, October 3, 1995, (Tape 1), THEODORE E. MANIS, SP 95-Y-047, continued from Page 153)

from side lot line. Located at 15158 Stratton Major Ct. on approx. 13,322 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 191.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Manis complied.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report dated September 26, 1995, outlining staff's position and stated that the applicant was requesting a variance of 3.1 feet.

Mr. Manis presented his request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Pammel made the observation that it would be much simpler if builders constructed the decks at the time of original construction instead of leaving doors leading to thin air, to be dealt with at a later time.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SP 95-Y-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Pammel seconded the motion and noted that the encroachment resulting from this application is no more than the present 16.9 foot setback of the existing dwelling.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-047 by THEODORE E. MANIS, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit construction of addition 16.9 feet from side lot line, on property located at 15158 Stratton Major Court, Tax Map Reference 53-4((8))191, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

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

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is approximately 13,322 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standards for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

Page 156, October 3, 1995, (Tape 1), THEODORE E. MANIS, SP 95-Y-047, continued from Page 154)

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

1. This special permit is approved for the location and the specified additions shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Theodore E. Manis, dated July 7, 1995, submitted with this application and not transferable to other land.
3. A building permit shall be obtained for the deck prior to any construction and final inspections shall be obtained.

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1995. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:15 p.m. and reconvened at 10:20 p.m.

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Page 155 October 3, 1995, (Tape 1), Scheduled case of:

McFaddin, VC 95-V-089

Upon returning from the recess, Mr. McPherson said he was informed that Mr. McFaddin, whose case had been heard earlier in the evening, had requested a waiver of the eight-day waiting period. The Board waived the eight-day waiting period and that waiver is reflected in the Resolution.

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Page 155, October 3, 1995, (Tape 1), Scheduled case of:

9:30 A.M. J.D.A. CUSTOM HOMES, INC., APPEAL 95-H-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that Outlot A is a separate lot from Lot 28 and therefore a sewage disposal system located on Outlot A to serve a dwelling on the abutting Lot 28 is not permitted under Zoning Ordinance provisions. Located at 9516 Leemay St. on approx. 39,370 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A; 28-1 ((1)) 28.

Dennis E. Rice, President, JDA Custom Homes, Inc., came forward to represent the appellant and stated that they had received a letter from the Deputy Zoning Administrator adding a new concern to their application and, as a result, he was requesting a deferral of the hearing. He said he had spoken to Page William E. Shoup, Deputy Zoning Administrator, about this request.

Chairman DiGiulian asked Mr. Shoup to comment.

Mr. Shoup stated that, as indicated in the staff report on the appeal, the appellant was proposing the use of Lot 28 and Outlot A for one building lot and, initially, staff believed that Lot 28 was a build able lot and that the issue was only the use of Outlot A; however, when preparing for the appeal, staff determined that Lot 28 also is not a buildable lot and staff advised Mr. Rice of that by letter dated September 28, 1995. Mr. Shoup said he had spoken with Tom Thomas, Esquire, who recently had been retained by Mr. Rice. Mr. Thomas had a conflict and could not be at the hearing that day; however, Mr. Thomas had requested more time to review the new issue and Mr. Shoup said he would not object to a deferral. Mr. Shoup and Mr. Thomas had discussed October 24 as a possible new hearing date.

Chairman DiGiulian asked if there was anyone else present who wished to address the scheduling of the appeal.

Richard McDowell came forward to speak in opposition to the appeal, stating that he had previously forwarded a letter to the Board. He said that, under the circumstances, he would not oppose a deferral.

Juan Gutierrez, 9522 Leemay Street, Vienna, Virginia, came forward to speak in opposition, stating that, in view of what had transpired, he was not sure he would be in town at the time of the new scheduled hearing date and wished to make his comments in opposition at this time. Chairman DiGiulian advised that the Board would not hear arguments in support of, or in opposition to, the appeal. Mr. Gutierrez said he would have to make a point of being present on October 24.

Mr. Hammack moved to schedule the new hearing date for October 24, 1995 at 10:00 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 156, October 3, 1995, (Tape 1), Action Item:

Approval of Minutes from August 1, 1995

Mr. Pammel so moved and the other members concurred. Mr. Kelley was not present for the vote.

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Page 156, October 3, 1995, (Tape 1), Action Item:

Approval of Resolutions from September 26, 1995

Mr. Hammack so moved. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 156, October 3, 1995, (Tape 1), Action Item:

Requests for Acceptance and Scheduling

Richard Cornicello Appeal
Recommended hearing date: December 12, 1995

Page 157, October 3, 1995, (Tape 1), Action Item, continued from Page 156)

Woodroof G. Fitzhugh, Trustee
Recommended hearing Date: January 30, 1996

Request by Deputy Zoning Administrator that Appeal not be Accepted

Guy Chapman Wilson and Maria Tereza Wilson Appeal

Mr. Pammel so moved. Chairman DiGiulian asked for discussion, stating he would support the motion; however, regarding the Wilson Appeal, he would support the motion because the check was not signed and not because of the notice issue. Mr. Dively stated his concurrence with Chairman DiGiulian.

Chairman DiGiulian asked if anyone was present who would like to address the motion. No one responded.

The motion carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 157, October 3, 1995, (Tape 1), Action Item:

Schedule of Meeting Dates

Chairman DiGiulian referenced Mr. Pammel's proposal that the Board schedule two meetings in August. Mr. Pammel said, at the request of staff, he would like to modify his proposal to schedule meetings for the 1st and 2nd Tuesdays in August and the Tuesday after Labor Day.

A discussion ensued. Mr. Pammel said his proposal was a compromise between what James P. Zook, Director, Office of Comprehensive Planning, had indicated his preference to be and the original proposal. Mr. Ribble asked if there was a need for the Board to meet with Mr. Zook and it was determined that no meeting was required. It was further discussed that the Tuesday meeting after Labor Day would probably receive the most opposition and that it could be dropped; the Board could then schedule only the two meetings in August.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, confirmed that the Board had this year held an extra meeting in June, July, and, since they did not meet the first week in September, they had two meetings during the second week in September, because the Board did not want to meet on the Thursday of the first week in September. They ended up with four meetings during the month of September.

Further discussion ensued.

Mr. Pammel proposed that the Board schedule one extra meeting in August for 1996 and see how that works out. He said that, if complications result, they can make necessary adjustments. Ms. Kelsey pointed out that there were "if needed" meetings on the agenda which could be activated; i.e., perhaps for the first meeting in September. Mr. Dively said it was reasonable to depend upon the "if needed" contingency.

Chairman DiGiulian reiterated the motion: There would be an extra meeting in August and reserve the Board Room for the Tuesday following Labor Day, on an "if needed" basis.

Mr. Pammel said that the motion was acceptable to him. The motion carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 157, October 3, 1995, (Tape 1), Action Item:

Approval of Special Permit Amendment Plat
Centreville Baptist Church, SPA 86-S-054

Page 158, October 3, 1995, (Tape 1), CENTREVILLE BAPTIST CHURCH, SPA 86-S-054, continued from Page 157)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, referenced the memo from Marilyn Anderson, Senior Staff Coordinator, indicating that the plat appeared to be in conformance with the recommendations the Board had made the previous week. Mr. Ribble voted to approve the plat. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. McPherson abstained because he was not present for the hearing the previous week. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 p.m.

Minutes by: Geri B. Bepko

Approved on: February 20, 1996


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 10, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; John Ribble; and Timothy McPherson. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:04 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 159, October 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JAMES T. & SARA D. BENNETT, VC 95-S-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 20.0 ft. from front lot line and 8.0 ft. from side lot line. Located at 10960 Rice Field Pl. on approx. 1.35 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((12)) 1A. (MOVED FROM 9/26/95)

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

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated October 3, 1995. One requested variance was to allow an otherwise prohibited accessory structure to remain in the front yard and to be 8.0 feet from the side lot line requiring another variance of 12.0 feet.

James Bennett, 10960 Rice Field Place, Fairfax Station, Virginia, stated he would like to build a garage for his antique car. The lot is fairly large, odd shaped and is restricted by a septic field. The location of the garage will be adjacent to a creek and a wooded area therefore, the neighbors will not be adversely impacted nor will they be able to see the garage.

Mr. McPherson asked Mr. Bennett to clarify which road the garage would have access to. He stated that it would open onto old Route 123 which is now an access road for the neighborhood.

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

Mr. McPherson moved to grant VC 95-S-079 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-079 by JAMES T. and SARA D. BENNETT, under Section 18-401 of the Zoning Ordinance to allow construction of accessory structure 20.0 feet from front lot line and 8.0 feet from side lot line, on property located at 10960 Rice Field Place, Tax Map Reference 77-3 ((12)) 1A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.35 acres.
4. The applicant met the nine required standards for variance.

5. The shape of the lot is irregular.
6. There is a water flow problem on the lot.
7. The requested variance would not adversely impact the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific accessory structure shown on the plat prepared by Dove & Associates dated June 19, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Hammack were not

present for the vote. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 161, October 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS ERIC AND JANET MANCHIO UTEGAARD, VC 95-V-090 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from rear lot line and 5.7 ft. from side lot line. Located at 2410 Belle Haven Meadows Ct. on approx. 14,932 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((42)) 10.

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

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated October 3, 1995 prepared by Lori Greenlief. The variance request was for 14.4 feet to the rear lot line and 4.3 feet from the side lot line.

Eric Utegaard, 2410 Belle Haven Meadows Court, Alexandria, Virginia, stated he would like to build a combination porch and deck on the rear of his house. The house sits deep on the lot due to grading and storm sewer easements which run through the front of the property and there are no objections from the neighbors.

Mr. Kelley questioned the applicant whether he could have had a deck put on the house when he bought it. Mr. Utegaard replied yes. However, the decks were small and expensive.

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

Mr. Kelley moved to grant VC 95-V-090 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-090 by THOMAS ERIC AND JANET MANCHIO UTEGAARD, under Section 18-401 of the Zoning Ordinance to allow construction of addition 10.6 feet from rear lot line and 5.7 feet from side lot line, on property located at 2410 Belle Haven Meadows Court, Tax Map Reference 93-1 ((42)) 10, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 14,932 square feet.
4. The applicant met the nine required standards for variance.

5. The shape of the lot is irregular.
6. The location of the house is set back on the lot.
7. The requested variance will not create any problems with the neighbors nor interfere with their rights.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Huntley, Nyce and Associates, Ltd. dated June 2, 1995, submitted with this application and is not transferable to other land. It is noted that the screens may be replaced with glass, wood or other material without an amendment to this variance.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

Page 163, October 10, 1995, (Tape 1), THOMAS ERIC AND JANET MANCHIO UTEGAARD, VC 95-V-090, continued from Page 162

variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 163, October 10, 1995, (Tape 1 & 2), Scheduled case of:

9:00 A.M. HENRY R. & TERESA H. SPROUSE, SP 95-S-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 16.0 ft. from rear lot line. Located at 7840 Doane Ct. on approx. 16,289 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (10) 28. (Concurrent with VC 95-S-092).

9:00 A.M. HENRY R. & TERESA H. SPROUSE, VC 95-S-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 7840 Doane Ct. on approx. 16,289 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (10) 28. (Concurrent with SP 95-S-052).

Mr. Kelley moved to defer this case to the end of the agenda. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 163, October 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PAUL LOTH, VC 95-V-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and deck 8.7 ft. from side lot line. Located at 9203 Volunteer Dr. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 100-4 ((3)) 66.

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

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated October 3, 1995 prepared by Lori Greenlief. The variance request was for 6.3 feet to the side lot line.

Paul Loth, 9203 Volunteer Drive, Alexandria, Virginia, stated that he has requested a variance at this location to maximize the use of his land. There is a large slope on the side of the house and a flood plain to the rear of the property.

Mr. Hammack and the applicant discussed the location of the deck and the impact on the adjacent neighbor.

Mr. Kelley asked the applicant if the lot has severe topographic conditions and slopes. Mr. Loth replied affirmatively.

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

Mr. Ribble moved to grant VC 95-V-091 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-091 by PAUL LOTH, under Section 18-401 of the Zoning Ordinance to allow construction of addition and deck 8.7 feet from side lot line, on property located at 9203 Volunteer Drive, Tax Map Reference 100-4 ((3)) 66, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,000 square feet.
4. The applicant met the nine required standards for a variance.
5. The topographic situation makes this an ideal place for the addition and deck.
6. There is a flood plain located in the rear of the property.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that

would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of the specific addition and deck shown on the plat prepared by Alexandria Surveys, Inc. dated June 9, 1995, revised through June 29, 1995, submitted with this application and is not transferable to other land. It is noted that for the porch addition, the screens can be replaced with glass, wood, or other material without an amendment to this variance.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 165, October 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ELEANOR W. WILLIAMS, SP 95-L-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 4.0 ft. from side lot line. Located at 6006 Frederick St. on approx. 7,940 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (19) 4. (Concurrent with VC 95-L-093).

ELEANOR W. WILLIAMS, VC 95-L-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.3 ft. from side lot line. Located at 6006 Frederick St. on approx. 7,940 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (19) 4. (Concurrent with SP 95-L-053).

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

Jane Kelsey, Chief, Special Permit and Variance Branch, presented staff's comments as outlined in the staff report dated October 3, 1995 prepared by Lori Greenlief. The special permit request for the addition was to modify the side yard requirement of 6.0 feet. The variance request for a carport was for 2.7 feet to the side yard requirement.

Eleanor Williams, 6006 Frederick Street, Springfield, Virginia, referenced the statement of justification submitted with the application.

In response to questions from the Board, Mrs. Williams stated that the garage would enhance her property, protect her car, and it would not go any further to the side yard than the already existing driveway.

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

Mr. Dively moved to grant SP 95-L-053 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-053 by ELEANOR W. WILLIAMS, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to permit addition to remain 4.0 feet from side lot line, on property located at 6006 Frederick Street, Tax Map Reference 80-3 ((2)) (19) 4, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,940 square feet.
4. The addition has been at this location for thirty years and has not been a problem.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-914 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat entitled, Variance Plat, Lot 4, Block 19, Section 5, Springfield, prepared by Dewberry & Davis, dated June 8, 1995, submitted with this application.

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

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

requested, the basis for the amount of time requested and an explanation of why additional time is required

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 1995. This date shall be deemed to be the final approval date of this special permit. The Board of Zoning Appeals waived the eight day waiting period.

Mr. Dively moved to grant VC 95-L-093 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-L-093 by ELEANOR W. WILLIAMS , under Section 18-401 of the Zoning Ordinance to allow construction of carport 2.3 feet from side lot line, on property located at 6006 Frederick Street, Tax Map Reference 80-3 ((2)) (19) 4, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,940 square feet.
4. The applicant met the nine required standards for variance.
5. The carport won't cover anymore area than the existing driveway.
6. The carport is close to the lot line but there is enough room for maintenance without difficulty.

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

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

Page 168, October 10, 1995, (Tape 1), ELEANOR W. WILLIAMS, SP 95-L-053 and VC 95-L-093, continued from Page 167

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified carport shown on the plat prepared by Dewberry & Davis, dated June 8, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 1995. This date shall be deemed to be the final approval date of this variance. The Board of Zoning Appeals waived the eight day waiting period.

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Page 168, October 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GARNETTE S. DUPONT, VC 95-D-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 7006 Girard St. on approx. 10,530 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 29. (DEF. FROM 7/11/95 FOR NOTICES)

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

David Hunter, Staff Coordinator, presented staff's comments as outlined in the staff report dated July 6, 1995. The variance request was for 5.0 feet to the side yard requirement.

Garnette Dupont, 7006 Girard Street, McLean, Virginia, referenced the statement of justification submitted with the application.

In response to questions from Mr. Hammack the applicant stated she was requesting the garage for storage of her car, along with other items and for security reasons.

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

Mr. McPherson moved to grant VC 95-D-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-047 by GARNETTE S. DUPONT, under Section 18-401 of the Zoning Ordinance to allow construction of addition 7.0 feet from side lot line, on property located at 7006 Girard Street, Tax Map Reference 30-4 ((32)) 29, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,530 square feet.
4. The applicant met the nine required standards for variance.

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

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

restrict all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Ralph L. Jones dated March 13, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 170, October 10, 1995, (Tape 1), Scheduled case of:

9:30 A.M. NATIONAL MEMORIAL PARK, INC./KING DAVID MEMORIAL PARK, SPA 80-P-027-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-P-027 for mausoleum within a cemetery to permit funeral home and crematory. Located N. of Lee Hwy., W. of West St. and on the S. and E. sides of Hollywood Rd. on approx. 92.89 ac. of land zoned R-1 and HC. Providence District. Tax Map 50-1 ((1)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The attorney, Lee Fifer, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated October 3, 1995 prepared by Lori Greenlief. Mrs. Kelsey noted that the applicant has recently amended the plat to address staff's concerns regarding the location of the parking lot. The applicant also connected the crematory with the funeral home. The development conditions should reflect the revised plat date of September 28, 1995 instead of April 11, 1995.

Lee Fifer, the applicant's agent, referenced the statement of justification submitted with the application. He added that the crematory portion has been moved at staff's suggestion to inside the rear of the funeral home and that it would be well positioned back from Lee Highway and West Street. He submitted a letter of support from the Pine Springs Civic Association. Mr. Fifer stated that the applicant is agreeable to the development conditions as proposed by staff.

Ken Robinson, Industrial Equipment and Engineering Company, gave background information on his company which manufactures the equipment that will be used in the crematory. He also addressed the safety, health and environmental impact of the crematory.

Louis J. Slade, Grove Slade Associates, gave his results of the traffic impact study done on the funeral home. He stated that the intersections will continue to operate at the same acceptable standards after the funeral home is developed.

In response to questions from Mr. McPherson, Mr. Fifer stated that there were 47 existing parking spaces around the administration building and that they would remain.

Chairman DiGiulian called for speakers in support.

Ron Kramer, 3025 Graham Court, Falls Church, Virginia, supported the application based on several meetings with representatives from the funeral home who addressed their concerns.

Chairman DiGiulian called for speakers in opposition.

Robert Elvin, 2809 West Glen Drive, Falls Church, Virginia, was opposed to the application based on concerns over possible health and environmental hazards and the close proximity of the crematory to the residences.

Mr. Elvin responded to questions from the Board by stating that he had no conflicting data to present on possible hazards and no suggestions for a better site for the crematory.

In rebuttal, Mr. Fifer stated that there is a similar situation at an Arlington Funeral Home where it is surrounded by residences. He indicated that he had contacted the area homeowner associations and they reported no complaints on file from the residences.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 80-P-027-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 80-P-027-2 by NATIONAL MEMORIAL PARK, INC./KING DAVID MEMORIAL PARK, under Section 3-103 of the Zoning Ordinance to amend SP 80-P-027 for mausoleum within a cemetery to permit funeral home and crematory, on property located North of Lee Highway, West of West Street and on the South and East sides of Hollywood Road, Tax Map Reference 50-1 ((1)) 30, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and HC.
3. The area of the lot is 92.89 acres.
4. The property has been used as a cemetery for several years and because of its size has evolved over time.
5. There will be traffic impact on the neighborhood but it is within reason.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 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. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Rinker, Detwiler & Associates, P.C., dated April 11, 1995, revised through September 28, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be conformance with the approved Special Permit plat and these development conditions.
5. One hundred and thirty (130) parking spaces shall be provided in the area of the funeral home/crematory as shown on the special permit plat. Forty-seven (47) parking spaces shall be provided around and near the administrative building/office as shown on the special permit plat.
6. There shall be no more than forty (40) employees on the entire site at any one time.
7. Landscaping and screening around the funeral home and crematory shall be as shown on Sheet 3 of 3 of the special permit plat. The type, size, number and exact location of the landscaping shall be reviewed and approved by the County Urban Forestry Branch.
8. The limits of clearing and grading line for the funeral home and crematory shall be substantially in conformance with that shown on the Sheet 3 of 3 of the special permit plat. The applicant shall work with the County Urban Forestry Branch to preserve the greatest possible amount of existing mature vegetation on the site.
9. The transitional screening and barrier requirements shall be waived and modified in favor of the existing fencing on the site and the existing and proposed vegetation along all lot lines.
10. The hours of operation shall be limited to the following:

Funeral Home: 24 hours a day for retrieval purposes only, general public hours - 9:00 a.m. to 10:00 p.m.

Crematory: 6:00 a.m. to 10:00 p.m.
Cemetery and Mausoleums: 7:00 a.m. to dark

- 11. Parking lot lighting shall be on standards no higher than twelve (12) feet, shall be directed downward and shall be shielded, if determined necessary by the Department of Environmental Management.
- 12. Stormwater detention shall be provided to the satisfaction of the Director, Department of Environmental Management.
- 13. The crematory shall comply with all County, State, and Federal Environmental Regulations applicable to its operation.

These conditions incorporate and supercede the development conditions from the previous approvals.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. K-V ENTERPRISES OF MCLEAN, INC., APPEAL 95-M-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellants' use of property as a storage yard in an R-3 District is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3524 Williams Dr. on approx. 46,901 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 107. (DEF. FROM 4/11 AT APP.'S REQ.)

William Shoup, Deputy Zoning Administrator, advised the Board that they were suggesting a deferral date of March, 1996 because the applicants are pursuing special exception approval which would remedy the situation.

Nicholas Vlissides, the applicant's attorney, stated that they are requesting a deferral so they can continue to seek out a special exception. The special exception application has been accepted and they are anticipating a January 10, 1996 Planning Commission hearing date. Therefore, they feel they will have it resolved by the March appeal date.

The following came forward to speak in opposition. Charles Hemmingway; Elanna Johnson, 3495 Paul Street; Marco Johnson, 3495 Paul Street. They felt the request for deferral was inappropriate because of the long length of time this zoning violation has been going on.

Page 174, October 10, 1995, (Tape 1), K-V ENTERPRISES OF MCLEAN, INC., APPEAL 95-M-004, continued from Page 173)

Mr. Shoup advised the Board that the notices were not done and the appeal has already been deferred once to allow them time to pursue the special exception. He stated that staff is working closely with the Zoning Evaluation Division to make sure what they are requesting through the special exception will resolve the problems on the site.

Mr. Dively questioned Mr. Shoup on how long it will take the Board of Supervisors to review this matter after the Planning Commission hears it. Mr. Shoup indicated a four to five week time frame.

Responding to Chairman DiGiulian's question, Mr. Vlissides indicated they weren't advised until one month after submitting the special exception application that there was a problem; therefore, there was a delay in getting it accepted.

Mr. Hammack made a motion to defer the appeal until a week following the Planning Commission hearing. Mr. Kelley seconded the motion which failed by a vote of 3-3. Mr. Pammel was absent from the meeting.

Mr. Kelley made a motion to defer the appeal to November 21, 1995 and that the applicant should come to the hearing prepared to present their case. Mr. Ribble seconded the motion which carried by a vote of 4-2. Mr. Pammel was absent from the meeting.

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Page 174, October 10, 1995, (Tape 1), Scheduled case of:

9:30 A.M. BARBARA BRADFORD SHEA AND NORMAN F. BRADFORD, JR., APPEAL 95-D-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that properties located at 9803 and 9805 Georgetown Pi. are not buildable lots under Zoning Ordinance provisions. Located at 9803 and 9805 Georgetown Pi. on approx. 20,517 sq. ft. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 29 and 30.

Chairman DiGiulian stated that he had a letter from the applicant's attorney requesting a deferral. Mr. Dively made a motion to defer to January 9, 1996. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 174, October 10, 1995, (Tape 1 & 2), Scheduled case of:

9:00 A.M. HENRY R. & TERESA H. SPROUSE, SP 95-S-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 16.0 ft. from rear lot line. Located at 7840 Doane Ct. on approx. 16,289 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (10) 28. (Concurrent with VC 95-S-092).

9:00 A.M. HENRY R. & TERESA H. SPROUSE, VC 95-S-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 7840 Doane Ct. on approx. 16,289 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (10) 28. (Concurrent with SP 95-S-052).

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

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated October 3, 1995 prepared by Lori Greenlief. The special permit request for the addition was to modify the rear yard requirement of 9.0 feet. The variance request was for 2.2 feet to the side yard requirement.

Henry Sprouse, 7840 Doane Court, Springfield, Virginia, referenced the statement of justification

submitted with the application. Mr. Sprouse responded to questions by stating that he has not made any modifications to the property since taking ownership in March.

Staff responded to questions by stating that the original owner did need a variance in order to expand the original carport.

Mr. Dively moved to grant SP 95-S-052 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-S-052 by HENRY R. AND TERESA H. SPROUSE, under Section 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 16.0 feet from rear lot line, on property located at 7840 Doane Court, Tax Map Reference 89-2 ((4)) (10) 28, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,289 square feet.
4. The location is 16 feet from the rear lot line therefore this is considered a minor request.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-914 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat entitled, Variance Plat, Lot 28, Block 10, Section 3B, West Springfield, prepared by Harold A. Logan, Associates, P.C., dated April 28, 1995, submitted with this application.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been

diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively moved to grant VC 95-S-092 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 3, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-092 by HENRY R. AND TERESA H. SPROUSE, under Section 18-401 of the Zoning Ordinance to allow construction of addition 9.8 feet from side lot line, on property located at 7840 Doane Court, Tax Map Reference 89-2 ((4)) (10) 28, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,289 square feet.
4. The variance requested is a minor one of 2.2 feet.
5. There is enough room for proper maintenance.
6. The addition will be in harmony with the neighborhood.

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

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

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

- 1. This variance is approved for the location and the specified garage shown on the plat prepared by Harold A. Logan, Associates, P.C., dated April 28, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 177, October 10, 1995, (Tape 2), Action Item:

Approval of Minutes
from July 11 and July 25, 1995 hearings

Mr. Kelley moved to approve the minutes from July 11 and July 25, 1995. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 178, October 10, 1995, (Tape 2), Action Item:

Approval of Resolutions
from October 3, 1995

Mr. Kelley moved to approve the resolutions from October 3, 1995. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 178, October 10, 1995, (Tape 2), Action Item:

Request for Acceptance and Scheduling of Appeal
Voyten and Associates

William Shoup, Deputy Zoning Administrator, stated that he believed the issue was not an appealable issue under the Zoning Ordinance provisions. The appeal relates to provisions of State Code Section 15.1-456, the 456 Review Process that provides for review by the Planning Commission of public facility proposals to determine if their location is in accordance with the Comprehensive Plan. Mr. Shoup referred to his October 2, 1995 memorandum which stated that on September 1, Jim Zook, Director of the Office of Comprehensive Planning, made a determination on what constitutes the submission date of an application for a 456 Review. This is an appeal of that determination. Section 18-301 of the Zoning Ordinance requires that a person aggrieved by the decision of the Zoning Administrator or other official made in the administration of the Zoning Ordinance may appeal to the Board of Zoning Appeals. However, the decision at issue was made in the administration of Virginia Code Section 15.1-456. It was not based on a Zoning Ordinance provision therefore it does not satisfy the requirement of Section 18-301. Mr. Shoup recommended that the appeal not be accepted.

Chairman DiGiulian questioned staff whether an individual can appeal a decision of any administrative officer in the County to the Board of Zoning Appeals. Mr. Shoup stated that they can appeal a decision of any administrative officer provided it is a decision made in the administration of the Zoning Ordinance.

Bernard C. Voyten, Jr., President of Voyten and Associates, stated that they were trying to develop a small recreational facility in a County park under lease to the Fairfax County Park Authority. The Zoning Administrator, on March 22, 1995, issued an opinion that they were required to undergo a 456 Review pursuant to Section 15.1-456 of the Virginia Code. On June 30, 1995 they submitted a completed 456 Review Application to the County. After the 60-day review period expired, they believed the application was deemed approved and they requested an affirmation of that fact from Mr. Zook. Mr. Voyten indicated that Mr. Zook denied the request stating that he was not bound to respond to their application under the time frame set forth under Section 15.1-456. Mr. Voyten advised that they have appealed Mr. Zook's decision as an agent to the Zoning Administrator. They were requested to prepare a 456 Review Application and also in that package it stated that if the application is not acted on within 60 days it is deemed approved. Mr. Voyten indicated that the Zoning Administrator made an interpretation of that section obligating them to do a 456 Review and they wish to come before the BZA pursuant to that fact at the most expedient time possible.

Mr. Dively asked staff whom the appellant should appeal to. Mr. Shoup advised he did not know if there is a remedy for them to appeal this type of decision; it is a legal question that he cannot answer.

Mr. Kelley made a motion to accept the appeal. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

Mr. Voyten asked the Board for an expedited hearing of the appeal. Mr. Shoup advised the Board that they were recommending a December 19, 1995 hearing date which will be after the scheduled Planning Commission hearing on the 456 application.

Mr. Kelley moved to schedule the application for November 21, 1995. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

Page 179, October 10, 1995, (Tape 2), Action Item:

Proposed Appeal Application Acceptance Procedure

Mr. Dively moved to concur with the procedure. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Minutes by: Teresa M. Wang

Approved on: December 12, 1995



Betsy S. Holt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 17, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:02 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 181, October 17, 1995, (Tape 1), Scheduled case of :

8:00 P.M. KOREAN UNITED METHODIST CHURCH OF GREATER WASHINGTON, SPA 82-D-090-3
Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-D-090 for church and related facilities to permit building additions, increase in parking spaces and site renovations. Located at 1219 Swinks Mill Road. on approx. 4.71 ac. of land zoned R-2. Dranesville District. Tax Map 29-2((1))15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Sara Hall, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 4.7 acre site is located on the northeast corner of the intersection of Lewinsville and Swinks Mill Roads. The subject property is zoned R-2. The surrounding lots are zoned R-1 or R-2 and developed with single family detached dwellings.

The applicant requested approval of a special permit amendment for a church and related facilities to allow building additions and an increase in parking spaces. The existing 14,875 square foot church building contains a sanctuary and various meeting rooms. A separate 621 square foot building, used as a study, is located north of the church building and will be demolished. An accessory storage structure is located northeast of the church building and will remain. The applicant proposed a 17,707 square foot addition which would include a new sanctuary with 400 seats. The existing sanctuary presently contains 400 seats and would be converted into a fellowship hall. The lower level of the sanctuary addition would contain classrooms. A two story administrative building was proposed north of the existing building where the demolished study is located. Additionally, 37 new parking spaces were proposed southeast of the sanctuary. Two rows of evergreen trees will be planted north and east of the parking lot and additional evergreen trees will be planted north of the existing storage shed and along Swinks Mill Road. No other construction or changes were proposed under this application.

Staff concluded that with the implementation of the Revised Proposed Development Conditions, dated October 16, 1995, the proposed use is in harmony with the recommendations of the Comprehensive Plan and satisfied all the General Standards and Standards for Group 3 Uses. For these reasons, staff recommended approval of SPA 82-D-090-3.

Ms. Hall said the Korean United Methodist Church was the oldest Korean church in the area and was formed in 1951. The applicant was seeking to relocate the seating capacity to a new sanctuary. She said the existing sanctuary would be converted to a large fellowship hall and kitchen with 37 new parking spaces added. Ms. Hall said the existing parking barely meets the County's minimum requirement of 1 space for 4 seats. She explained the total 140 parking spaces requested would be consistent with the level of parking which the Board had approved for other churches.

Ms. Hall stated that the applicants have enjoyed a positive relationship with the neighbors since its purchase of the property. Representatives from the church met with the neighbors to show them the proposed plan, and at the suggestion of some of the neighbors, the plan was revised to bring the current parking lot more to the interior of the lot away from the residences to the north and to the east. Ms. Hall continued by discussing concerns the applicant had with the proposed development conditions.

Page 182, October 17, 1995, (Tape 1), KOREAN UNITED METHODIST CHURCH OF GREATER WASHINGTON, SPA 82-D-090-3, continued from Page 181)

In response to Mr. Hammack's question, Ms. Langdon replied that a revised plat was not necessary for the revised development conditions.

Chairman DiGiulian called for speakers in support of the application.

Captain Anastasian, 7741 Bridle Path Lane, and Tom Gerardi, abutting property owner, spoke in support of the application. Mark Freidlander, attorney representing the Sandbergs, the residents northeast of the church property, submitted proposed development conditions and spoke in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Hammack and Ms. Hall discussed the Proposed Development Conditions submitted by Mr. Freidlander with regard to the lighting requirements.

Mr. Hammack moved to grant SPA 82-D-090-3 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report and addendum dated October 16, 1995 as amended.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-D-090-3 by KOREAN UNITED METHODIST CHURCH OF GREATER WASHINGTON, under Section 3-203 of the Zoning Ordinance to amend SP 82-D-090 for church and related facilities to permit building additions, increase parking spaces and site renovations, on property located at 1219 Swinks Mill Road, Tax Map Reference 29-2((1))15, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 4.71 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-203 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Young W. Park, AIA, dated July 17, 1995, revised through October 2, 1995 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. Transitional Screening 1 shall be modified to allow the following:

Existing vegetation on site shall be preserved and maintained as indicated on the special permit plat. Additional landscaping shall be provided as depicted on the special permit plat to provide additional transitional screening. Size and species of all plantings shall be as determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review and shall not be limited to white pines.

At least ten of the designated trees in the proposed screening area north and east of the Children's Play Area shall be evergreen trees that are a minimum of eight feet tall at the time of planting.

6. The barrier requirement shall be waived along all lot lines.
7. The maximum number of seats within the main area of worship shall be 400.*
8. The maximum number of parking spaces shall be 140. All parking shall be on site as shown on the special permit plat.
9. The parking lot shall be built and delineated in conformance with the Public Facilities Manual to the satisfaction of the Director, DEM. Interior parking lot landscaping shall be provided and maintained as shown on the plat and in accordance with Article 13 of the Zoning Ordinance.*
10. Parking lot lighting for existing parking lot shall be the low intensity type, on standards not to exceed twelve (12) feet in height, and shielded, if necessary, so as to prevent light or glare from projecting onto adjacent residential properties.*

With respect to the new parking lot, no lights except footlights and one double headed light pole shall be placed or used in the new parking area unless the County requires otherwise. The double headed light shall be no taller than 12 feet and shall be shaded from the residential areas.

The lights in the new parking area shall be turned off except during special church events when it is anticipated that the new parking area will be in use.

11. Dedication of right-of-way to 45 feet from the centerline of Swinks Mill Road shall be provided for the entire frontage of the property and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, if required by DEM, which ever occurs first. Ancillary easements shall be provided if necessary to facilitate any improvements.*
12. The right turn lane into the site's entrance on Swinks Mill Road shall be striped in accordance with the Virginia Department of Transportation's (VDOT) standards. The applicant shall ensure

adequate sight distance to the north of the site entrance on Swinks Mill Road. This condition shall involve removal of vegetation and other sight distance obstructions on Swinks Mill Road and future maintenance to ensure continued adequate sight distance.*

13. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance as determined by the Department of Environmental Management at the time of site plan review.
14. The barn (storage shed) on site shall be used for storage only.*
15. Signs shall be permitted in accordance with the provisions of Article 12 of the Zoning Ordinance.*

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Pammel not present for the vote. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 25, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 184, October 17, 1995, (Tape 1), Scheduled case of :

8:00 P.M. NVR HOMES, INC., SP 95-L-051 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.3 ft. and deck 12.4 ft. from rear lot line. Located at 6106 Bayliss Knoll Ct. on approx. 10,071 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3((35))41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, attorney, with the law firm of Walsh, Colucci, Stackhouse, Emrich and Lubely, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief stating the subject property is located on Bayliss Knoll Court in the R-4 Zoning District. The application was for a reduction in the minimum yard requirements based on an error. The developer constructed the addition and the deck. The addition is 19.3 feet from the rear property line and a modification of 5.7 feet was requested. The deck is 12.4 feet from the rear lot line and with the permitted extension, 13.0 feet was required. Therefore, a reduction of 0.6 feet was requested.

In response to Mr. Kelley's question, Ms. Strobel replied she was not aware of any other similar special permit application requested by NVR Homes.

Ms. Strobel said the applicant became aware that the addition and deck encroached into the minimum rear yard requirement subsequent to construction. She said the applicant filed the request for reduction in the minimum yard requirement based on error in building location. Ms. Strobel stated the request met the required standards and would not adversely affect surrounding properties. She noted the nine letters received in support of the application and requested a waiver of the 8 day waiting period.

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

Mr. Ribble moved to grant SP 95-L-051 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 10, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-051 by NVR HOMES, INC., under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.3 feet and deck to remain 12.4 feet from rear lot line, on property located at 6106 Bayliss Knoll Court, Tax Map Reference 83-3((35))41, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 1995; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

That the error exceeds ten (10) percent of the measurement involved;
The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

Such reduction will not impair the purpose and intent of this Ordinance;

- A. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- B. It will not create an unsafe condition with respect to both other property and public streets;
- C. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- D. The reduction will not result in an increase in density or floor area ratio from that permitted by the

applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified addition and deck shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat entitled, Special Permit Plat, Lot 41, Section 2, Villages at Huntington, prepared by The Engineering Groupe, Inc., dated June 19, 1995, revised July 18, 1995, submitted with this application.

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble moved that the 8-day waiting period be waived, it was seconded by Mr. Hammack and the motion carried by a vote of 5-0. Mr. Pammel was not present for the vote and Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 186, October 17, 1995, (Tape 1), Scheduled case of :

8:00 P.M. MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-3 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 for church and related facilities to permit two trailers. Located at 1020 Balls Hill Rd. on approx. 7.05 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 21-3((15))A1 and 21-3((1))50, 50A and 51.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Barnhart, 1020 Balls Hill Road, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating the subject property is 7.05 acres in size and is located on the west side of Balls Hill Road between Balls Hill road and the Capital Beltway south of Georgetown Pike. The site is comprised of 4 parcels, Lots 50, 50A, 51 and A1. Lot A1 and the northern portion of lot 51 are zoned R-1. Lots 50, 50A and the southern portion of Lot 51 are zoned R-2.

Access to the site is via a 30 foot wide commercial entrance at the southeast corner of the site. A 20 foot

wide driveway labeled "Exit Only" is located at the northeast corner of the site. A right turn deceleration exists along the entire frontage of the site.

The existing church structure is located on the eastern portion of the site. The 736 seat church sanctuary is located along the Balls Hill Road frontage, and a former single family residence now used for classrooms is located on Lot 50A along the southern property line. The majority of parking is located to the rear of the structure.

Surrounding properties to the east are zoned R-3. Residential lots to the south are zoned R-2 and R-1. The Capital beltway is located along the northwestern property line, and a single residential lot zoned R-1 lies north of the subject property.

The applicant, McLean Presbyterian Church, requested to amend SP 85-D-034 for a church and related facilities to allow two temporary trailers for a period of five years.

The two proposed trailers are shown on the plat to the rear of the church building, replacing 12 parking spaces behind the sanctuary. A total of 277 parking spaces will remain, the majority of which are located in the R-1 portion of the site and the Educational wing of the church building and the former dwelling are located in the R-2 portion of the property. The Floor Area Ratio FAR in the R-1 portion of the property (0.27) exceeds the maximum allowed by the Zoning Ordinance (0.15). Therefore, a rezoning application must be filed in order for the FAR to comply with Zoning Ordinance Regulations. In previous applications, it appears that the FAR was calculated using an "average FAR" for the entire site, based on the R-1 zoning district provisions. The FAR for each zoning district must not exceed the maximum for the said district.

Development Condition 14 states that the applicant will apply for a rezoning within six months of the date of approval in order to rezone the entire property to comply with the maximum FAR restrictions.

Staff concluded that with the implementation of the proposed development conditions the application is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Therefore, staff recommended approval of SPA 85-D-034-3 subject to the proposed Development Conditions contained in Appendix 1 of the staff report.

Mr. Barnhart stated that two 14.0 feet trailers were requested to be placed on the parking lot. He said the trailers would not be kept beyond five years. Mr. Barnhart discussed the purpose of the trailers and the church concerns pertaining to the lack of space and the church population.

Mr. Hammack said it seemed as if the church was making reasonable efforts to try to accommodate the church population and the requirement of services, he asked if the church could guarantee removal of the trailers in five years.

Mr. Barnhart replied hopefully the church would be in a financial position to proceed with expansion and they would be able to remove the trailers within the five year time period.

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

Mr. Kelley moved to grant SPA 85-D-034-3 for the reasons set forth in the Resolution, subject to the Proposed Developed Conditions contained in the staff report dated October 10, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 85-D-034-3 by MCLEAN PRESBYTERIAN CHURCH, under Section 3-103 and 3-203 of the Zoning Ordinance to permit to amend SP 85-D-034 for church and related facilities to permit two trailers, on property located at 1020 Balls Hill Road, Tax Map Reference 21-3((15))A1 and 21-3((1))50, 50A and 51, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and R-2.
3. The area of the lot is 7.05 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 and 3-203 of the Zoning Ordinance.

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

- *1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- *2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Harold A. Logan Associates, P.C. dated July 12, 1995 and approved with this application, as qualified by these development conditions.
- *3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- *4. The maximum seating capacity in the main area of worship shall be limited to a total of 736 seats. There shall be a maximum of 277 parking spaces as shown on the plat. Accessible parking shall be provided in accordance with Code requirements. All parking shall be on site.

The church shall institute a program to educate their parishioners that all parking must be confined to the site and this program is to include parking lot attendants, if required.

- *5. The limits of clearing and grading shall be maintained as shown on the plat submitted with the special permit amendment plat.

- *6. The existing vegetation shall be maintained along all lot lines and shall satisfy Transitional Screening 1.
- *7. Barrier F shall be maintained along Lots 4, 5, 6, and 50B where the property is adjacent to the church's southern property line, except along Lot A1. The barrier requirement shall be waived along other lot lines except as stated above.
- *8. The existing interior parking lot landscaping shall be maintained.
- *9. The right turn deceleration lane shall be maintained at the southern entrance from Balls Hill Road. If it is determined by the Office of Transportation at any time that the signs indicating exit only provided to prevent ingress movements into the northern exit are not effective, the applicant shall construct a standard right-turn deceleration lane.
- *10. The structure shall maintain acoustical treatment as follows:
 - Exterior walls shall have a laboratory sound transmission class (STC) of at least 39.
 - Doors and windows shall have a laboratory STC rating of at least 28. If "window" function as the walls, then they shall have the same laboratory STC rating specified for exterior walls.
 - Adequate measures to seal and caulk between surfaces shall be provided.
 - If the building is not constructed to the noise standards set forth above then a school or child care center shall not be allowed in the building, unless it can be acoustically retrofitted or modified to meet these standards.
- *11. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent residential properties as determined by the Department of Environmental Management.
- *12. Signs shall be permitted provided they are erected in accordance with the provisions of Article 12. Signs shall be located so as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.
- 13. The term for the location of the two (2) temporary trailers on the subject property shall be limited to five (5) years from the final date of this special permit approval.
- 14. The applicant shall apply for a rezoning of the R-1 portions of the subject property within six (6) months from the final date of this special permit approval.

These conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the

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amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 25, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 190, October 17, 1995, (Tape 1), Scheduled case of :

8:00 P.M. ST. MARY OF SORROWS, MOST. REV. JOHN R. KEATING, SPA 77-A-041-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-A-041 for a church and related facilities to permit nursery school, building additions and accessory storage structures. Located at 5222 Sideburn Rd. on approx. 6.33 ac. of land zoned R-1. Braddock District. Tax Map 68-4((1))2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Juanpere, the applicant's architect, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the 6.33 acre site is located on the west side of Sideburn Road near its intersection with Zion Drive. The property is zoned R-1. The surrounding lots are zoned R-1 or R-2 and developed with single family detached dwellings.

The applicant requested approval of a special permit amendment for a church and related facilities to permit a nursery school, building additions and accessory storage structures. The existing building consists of 33,590 square feet which contains an 800 seat sanctuary and various meeting rooms and offices. The applicant proposed a 3,608.3 square foot addition at the rear of the church building to be used as a nursery school for 99 children. The nursery school will meet Monday through Friday with two sessions, one from 9 am to 12 noon and the other from 12:30 pm to 3:30 pm. A play area is proposed adjacent to the nursery school addition which will be surrounded by a board on board fence. Two small storage buildings located in a parking lot island southwest of the church building would be demolished and a single storage building built in their place. A storage structure was proposed on the north side of the play area and several other storage additions to the existing building were proposed totaling 2,560 square feet. No other construction or changes were proposed with this application.

Staff concluded that the application is in harmony with the Comprehensive Plan and in conformance with the General Standards and Standards for all Group 3 uses. Therefore, staff recommended approval of SPA 77-A-041-2 subject to the Proposed Development Conditions dated October 10, 1995.

Mr. Juanpere said the initial design concept was presented to the neighborhood at a town meeting in March of 1995. He said they redesigned the project to what is presently existing, creating a 50 foot buffer from the north property line to the building itself and would leave a 40 foot wide buffer of existing trees in place. Mr. Juanpere said the owner agreed to supplement the evergreen trees as noted in the development conditions and the north elevation would be a blank wall with only windows in the chapel area. He said the additions would be compatible to the existing building and the application was within the requirements of the FAR.

Mr. Pammel asked Mr. Juanpere if the applicant was aware of the letters received in opposition. Mr. Juanpere replied he was only aware of the letter pertaining to the FAR issue. Mr. Juanpere was given a copy of the letters to review before rebuttal.

Chairman DiGiulian called for speakers.

Jerry Creedon, Administrator of St. Mary of Sorrows, read a letter submitted by Father Casey of St. Mary of Sorrows and spoke in support of the application.

Bill Sweitlik, adjacent property owner, Bob Weinfeld and John Henneberger spoke in opposition concerning the noise impact from the playground and the air conditioner, tree preservation and buffering, lighting glare, Stormwater management, visual compatibility, traffic impact, playground and storage areas, and the previous agreement signed in 1978 by the adjacent property owners and the church pertaining to tree preservation. Supplemental conditions, letters of opposition and the signed agreement were distributed to the Board.

Mr. Juanpere said in rebuttal that the proposed conditions submitted by the speakers were already stated in the proposed development conditions contained in the staff report. He stated the applicant had no objections to the recommendations of the staff.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant SPA 77-A-041-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 10, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 77-A-041-2 by ST. MARY OF SORROWS, MOST. REV. JOHN R. KEATING, under Section 3-103 of the Zoning Ordinance to amend SP 77-A-041 for a church and related facilities to permit nursery school, building additions and accessory storage structures, on property located at 5222 Sideburn Road, Tax Map Reference 68-4((1))2, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 6.33 acres.
4. The applicant met with the community and addressed a great many of their concerns.
5. The possibility of problems will not be caused by the day school.
6. The day school will be operated on non peak hours.
7. The applicant will provide plenty of screening.
8. The noise will be mitigated.
9. The application was thorough and well presented and its not necessary to bring in supplemental conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Intec Group, Inc., dated May 22, 1995 revised June 29, 1995 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The seating capacity in the main area of worship shall remain at its present level of 800.*
6. The nursery school shall be limited to a maximum daily enrollment of 99 children.
7. The hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.
8. There shall be a maximum of fifteen (15) full-time employees for the church use.* There shall be a maximum of twelve (12) full-time employees for the nursery school use.
9. There shall be a minimum of 223 parking spaces and a maximum of 243 parking spaces. The size of the parking spaces shall be in accordance with Sect. 7-802 of the Public Facilities Manual. All parking shall be on site as shown on the special permit plat.*
10. The exterior of the additions shall be architecturally compatible with the existing church and shall be similar in color, style and materials as determined by the Department of Environmental Management (DEM).*
11. The current Stormwater detention system does not meet County detention requirements or the best management practices (BMP) requirements of the Chesapeake Bay Preservation Act. In order to address these problems the applicant shall comply with all County storm drainage and BMP requirements to the satisfaction of the Director of the Department of Environmental Management. A Non-Residential Use Permit for the proposed addition to the subject property shall not be issued until this problem has been addressed and resolved. If, in order to comply with this commitment, the applicant must make changes to the Special Permit plat approved with this application which are not in substantial conformance with the Special Permit plat, the applicant will be required to apply for a Special Permit Amendment.
12. The barrier requirement shall be waived along all lot lines, except that the applicant shall provide a six (6) foot high board-on-board fence around the northern and western perimeters of the play area.

Page 193, October 17, 1995, (Tape 1), ST. MARY OF SORROWS, MOST. REV. JOHN R. KEATING, SPA 77-A-041-2, continued from Page 192

13. The limits of clearing and grading shall be shown on the special permit plat. The existing vegetation on site shall be deemed to fulfill the requirements for Transitional Screening 1 along all lot lines with the following exceptions:

Existing vegetation on site shall be preserved and maintained as indicated on the approved special permit plat. Evergreen trees shall be provided between the play area and the nursery school addition, and the northern and western lot lines. These trees shall be sufficient in number, type and size to provide visual screening to the adjacent residences of the nursery school and play area additions as determined by the Urban Forestry Branch at the time of site plan review. No existing vegetation shall be removed to install this additional screening except if it is dead, dying or hazardous, and it shall be replaced as indicated in the following paragraph.

Any landscaping or existing vegetation on site as approved by the Urban Forestry Branch in conjunction with site plan approvals under SP 77-A-041 and SPA 77-A-041-1 shall be inspected by the Urban Forester and replacement plantings shall be required for any vegetation which is dead, dying or hazardous.

14. Interior and peripheral parking lot landscaping and tree cover requirements shall be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of any plantings shall be as determined by the Urban Forestry Branch, DEM at the time of site plan review.
15. Adequate site distance shall be provided both to the north and south of the site entrance on Sideburn Road.*
16. Lighting in the parking area shall be directed away from the adjacent properties and there shall be no glare upon the surrounding residential properties.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 25, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Approval of June 27, 1995 Minutes

The June 27, 1995 Minutes were approved by the Board of Zoning Appeals and carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Mr. McPherson was absent from the meeting.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Approval of October 10, 1995 Resolutions

The October 10, 1995 Resolution were approved by the Board of Zoning Appeals and carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Approval of Revised Plats and Resolution
Paul E. Schmitt, VC 95-P-086

Mr. Pammel moved to approve the revised plat and resolution submitted by Paul E. Schmitt on October 11, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
Craig Calhoun, VC 95-V-109

Mr. Dively moved to deny the Out of Turn Hearing Request for VC 95-V-109 and it was seconded by Mr. Pammel. The motion carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
Kenneth Jahelka, VC 95-P-108

Mr. Dively moved to deny the Out of Turn Hearing Request for VC 95-P-108 and it was seconded by Mr. Hammack. The motion carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 194, October 17, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
First Pentecostal Church of God, SP 95-M-065

Mr. Dively moved to deny the Out of Turn Hearing Request for SP 95-M-065 and it was seconded by Mr. Hammack. The motion carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

Page 195, October 17, 1995, (Tape 1), Information Item:

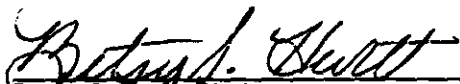
Mr. Pammel requested a report from the County Attorney's Office pertaining to why it took 60 days for the County Attorney's Office to approve a Affidavit for the Jahelka application.

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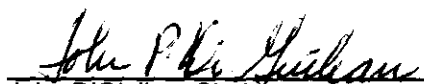
As there was no other business to come before the Board, the meeting was adjourned at 9:25 p.m.

Minutes by: Regina Thorn

Approved on: November 21, 1995



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 24, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Ina Stagg, a new planner with the Zoning Evaluation Division. The BZA welcomed Ms. Stagg.

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Page 197, October 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. STAN & BETTYE BARRETT, VC 95-V-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 24.0 ft. from front lot line and dwelling to remain 30.0 ft. from front lot line. Located at 9200 Wrights Hollow Ln. on approx. 43,077 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 23. (DEF. FROM 7/25/95 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bettye Barrett, 9200 Wrights Hollow Lane, Lorton, Virginia, replied that it was.

Ms. Kelsey then presented staff's position as outlined in the staff report. The variance request was to allow the construction of a deck 16.0 feet from the front lot line and to allow the dwelling to remain 10.0 feet from the front lot line.

Ms. Barrett presented their request as outlined in the statement of justification submitted with their application.

The applicant's landscape architect, Joe Duggan, spoke in support of the request and said they had not been aware of the house location problem when they designed the deck.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 95-V-055 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-055 by STAN AND BETTYE BARRETT, under Section 18-401 of the Zoning Ordinance to permit construction of deck 24.0 feet from front lot line and dwelling to remain 30.0 feet from front lot line, on property located at 9200 Wrights Hollow Lane, Tax Map Reference 106-4((4))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1995; and

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

1. The applicants are the owner(s) of the land.
2. The present zoning is R-1.
3. The area of the lot is 43,077 square feet.
4. The applicants have met the nine required standards for the granting of a variance; specifically, the lot has an irregular shape and size.
5. The initial location of the house on the lot was based on an erroneous setback and the house now encroaches on that setback.
6. The proposed deck cannot be constructed elsewhere on the lot.

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

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

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

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

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

1. This variance is approved the location of the specific deck and dwelling shown on the plat prepared by Joseph E. Duggan, ASLA, undated, received on April 11, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to construction of the deck and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARGARET ELLEN HORSKY BURNS, SP 95-M-033 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification on limits on keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 7135 Oak Ridge Rd. on approx. 11,625 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 57. (MOVED FROM 7/25 AT APP.'S REQUEST)

The BZA deferred this application to December 12, 1995 , at 9:00 a.m. to allow the applicant to meet the notice requirement set forth in the Zoning Ordinance.

The Chairman polled the audience to determine if there was anyone present who wished to speak to the deferral. Brad Bell and Siobhan Burrell-Gwyder, owners of Lot 233, had no objections to the deferral as long as the applicant complied with the development conditions contained in the staff report. The BZA assured the speakers that any development conditions would be enforced by the Zoning Enforcement Branch in the Office of Comprehensive Planning.

Mr. Kelley made a motion to defer to the date and time suggested by staff. Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Ribble being absent from the meeting. Mr. Kelley asked that staff convey to the applicant that he personally would not support another deferral. The other members agreed.

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9:00 A.M. DAVID R. & VALERIE S. GRACE, SP 95-D-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 10.3 ft. from side lot line and deck 9.7 ft. from side lot line. Located at 1611 Forest Ln. on approx. 17,978 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 535. (Concurrent with VC 95-D-095).

9:00 A.M. DAVID R. & VALERIE S. GRACE, VC 95-D-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 9.7 ft. from side lot line. Located at 1611 Forest Ln. on approx. 17,978 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 535. (Concurrent with SP 95-D-057).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, David Grace, 1611 Forest Lane, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position as outlined in the staff report. The applicants' request was for a variance of 4.7 feet from the side lot line for the dwelling and 5.3 feet from the side lot line in order to construct a 8.7 foot high deck.

Mr. Grace presented their justification as outlined in the statement submitted with their application.

There were no speakers and the public hearing was closed.

Mr. McPherson made a motion to grant SP 95-D-057 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 17, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-057 by DAVID R. AND VALERIE S. GRACE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 10.3 feet from side lot line and deck 9.7 feet from side lot line, on property located at 1611 Forest Lane, Tax Map Reference 31-4((4))535, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1995; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

Page 201, October 24, 1995, (Tape 1), DAVID R. & VALERIE S. GRACE, SP 95-D-057 and VC 95-D-095, continued from Page 200)

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and specified dwelling and deck shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated June 14, 1995, submitted with this application.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. McPherson made a motion to grant VC 95-D-095 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 17, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-095 by DAVID R. AND VALERIE S. GRACE, under Section 18-401 of the Zoning Ordinance to permit construction of deck 9.7 feet from side lot line, on property located at 1611 Forest Lane, Tax Map Reference 31-4((4))535, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1995; and

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

1. The applicants are the owner(s) of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,978 square feet.
4. Based in part on the staff report and testimony presented, the applicant has satisfied the nine required standards for the granting of a variance.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location and the specified deck shown on the plat prepared by Alexandria Surveys, Inc., dated June 14, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 203, October 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JERRY D. & KAREN STONE, SP 95-S-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 0.0 ft. from rear lot line and 16.4 ft. from side lot line and 0.1 ft. from other side lot line. Located at 7826 Mulberry Bottom Ln. on approx. 8,584 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((6)) 132. (Concurrent with VC 95-S-094).

9:00 A.M. JERRY D. & KAREN STONE, VC 95-S-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 6.0 ft. in height to remain and minimum rear yard coverage to exceed 30%. Located at 7826 Mulberry Bottom Ln. on approx. 8,584 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((6)) 132. (Concurrent with SP 95-S-054).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, William (Tom) Thomas, FAGELSON, SCHONBERGER, PAYNE & DEICHMEISTER, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position as outlined in the staff report. The requested modification for the special permit application was for 25.0 feet to the minimum rear yard and 14.9 feet and 3.6 feet to the minimum side yard to allow a deck and gazebo to remain. The variance request was for 2.7 feet to allow a 8.7 foot high frame fence to remain.

Mr. Thomas presented the justification for both the variance and special permit as outlined in the statement of justification submitted with the application and submitted photographs to the BZA for its review and discussed the topographic conditions of the lot. He said the gazebo encroaches into land owned by the Fairfax County School Board and are currently in negotiations with the School Board to obtain permission allow the structure to remain. Mr. Thomas submitted a petition to the BZA signed by the neighbors and copies of permits obtained by the applicant for the pool and fence.

Mr. Hunter said based on information obtained from Zoning Enforcement and the street files, there was no indication that permits had been issued for any of the structures.

A discussion took place between the BZA and Mr. Thomas as to when the gazebo was constructed. The applicant, Mr. Stone, said the gazebo was constructed in 1985.

Chairman DiGiulian called for speakers and the following came forward. John Mitchell and Sharon Jones described how the structures enhance the neighborhood.

Tom Williams, with the Fairfax County School Board, said the School Board would ask that any encroachment be eliminated because it would set a precedent for other sites throughout the County.

There was no opposition and the public hearing was closed.

Mr. Kelley asked Mr. Thomas to respond to the speaker's comments. He asked that the BZA defer the case to allow negotiations to continue between the applicant and the School Board.

Mr. Kelley made a motion to grant the variance and defer the special permit to allow negotiations to continue between the applicant and the School Board. Mr. Dively seconded the motion for purposes of discussion. Following a discussion among the BZA members, Mr. Kelley withdrew his original motion and moved to defer both applications for additional testimony. The motion carried by a vote of 6-0 with Mr. Ribble being absent from the meeting. Jane Kelsey, Chief, Special Permit and Variance, suggested January 23, 1996, at 9:00 a.m. Hearing no objection, the Chair so ordered.

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Page 204, October 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. SYLVIA W. WATERSTON, SP 95-Y-056 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of deck 9.0 ft. from side lot line. Located at 15562 Smithfield Pl. on approx. 25,000 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 53-1 ((2)) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Sylvia Waterston, 15562 Smithfield Place, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented staff's position as outlined in the staff report.

Ms. Waterston referenced the justification submitted with the application and added that the community's Architectural Review Board had approved the request.

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

Mr. Hunter noted that staff had received a letter in opposition from the adjacent neighbor.

Mr. Dively made a motion to grant SP 95-Y-056 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 17, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-056 by SYLVIA W. WATERSTON, under Section 8-913 of the Zoning Ordinance to permit allow modification to minimum yard requirements for an R-C lot to permit construction of deck 9.0 feet from side lot line, on property located at 15562 Smithfield Place, Tax Map Reference 53-1((2))24, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS, AN.
3. The area of the lot is 25,000 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.
8. The house is placed way to the side of the lot.
9. The property has basically been down zoned and the structure would have been allowed under the previous zoning.

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

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standards for All Group 9 Uses; and Sect. 8-913, Provisions for

Approval of Modifications to the minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified porch addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Greenehorne & O'Mara, Inc. And adopted March 15, 1989, revised by Sylvia Waterston on July 31, 1995, submitted with this application.
3. A Building Permit shall be obtained and final inspections shall be approved for the week.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. AUDREY V. DOILEY AND ADONNA MCNEIL, SP 95-V-055 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a child care center. Located at 2704 Beacon Hill Rd. on approx. 20,822 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Ron Elliott, with Building Design Architects, replied that it was.

David Hunter, Staff Coordinator, presented staff's position as outlined in the staff report and noted that although the applicant has reduced the number of children to 50 and revised the plat to show 10 parking spaces, staff was still of the opinion that the proposed use would be too intense for the site and recommended denial of the application.

Mr. Elliott said the applicant agreed to all of staff's Proposed Development Conditions and noted the commercial uses in the surrounding area including a day care center in the immediate area. He said the Fairfax County Department of Family Services was recommending approval of the special permit. Mr. Elliott then proceeded to describe how the applicant proposes to operate the day care center so that it will not adversely impact the neighborhood and added that he believed the layout of the site was planned for this type of institutional use.

The applicant, Audrey Doiley, said they were trying to assist the parents who would be the most impacted by the Welfare Reform which will be instituted in April 1996 and added that they have been working closely with the Fairfax County Office for Children and the Department of Social Services.

Mr. Kelley asked for a clarification as to where the center would be located. Following the clarification from the speaker, he agreed there was a lot of commercial uses in the area. Chairman DiGiulian called for opposition. Marjorie Johnson, 6707 Beddoe Street, Alexandria, Virginia,

said her opposition was based on the noise that would be generated by the children, and that she believed it would adversely impact their property values. She submitted opposition letters to the BZA from other neighbors.

Mr. Kelley assured the speaker that any Development Conditions imposed by the Board would be enforced. Ms. Johnson said she just did not believe the use was appropriate for the area.

In rebuttal, Mr. Elliott said he did not believe the use would impact the residents on Beddoe Street and added that he believed this use compared to the impact from the nearby fire department would be minimal.

A discussion took place between the BZA and staff with regard to the Development Conditions relating to the hours of operation. Mr. Elliott said he believed the applicant would be agreeable to the hours of 6:30 a.m. to 6:30 p.m.

There was no further and the public hearing was closed.

Mr. Hammack made a motion to grant SP 95-V-055 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report with Condition 7 amended to reflect the hours of operation being "6:30 a.m. to 6:30 p.m."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-V-055 by AUDREY V. DOILEY AND ADONNA MCNEIL, under Section 3-403 of the Zoning Ordinance to permit a child care center, on property located at 2704 Beacon Hill Road, Tax Map Reference 93-1((1))80, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4 and HC.
3. The area of the lot is 20,882 square feet.
4. The original applicant was too intense for the site, but the applicant has agreed to limit the maximum daily enrollment to 20, to limit the number of children outside at any one time to 10, and to change hours of operation.
5. The property is located in a transitional area of some sort near Beacon Hill Mall and will only operated during the traditional work house Monday through Friday.
6. Although the Board of Zoning Appeals was not unmindful of the opposition speaker's comments, the proposed use would lock in a transitional use and protect the rest of the community.
7. It appears the structure was constructed to be used as a child care center, because it has the appearance of being institutional.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Building Design Associates dated May 11, 1995, revised through September 26, 1995 and approved with this application as qualified by these development conditions.
3. 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.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment shall not exceed twenty (20) children.
6. The maximum number of employees including the applicant shall be limited to three (3) on site at any one time.
7. The hours of operation shall be limited to 6:30 a.m. until 6:30 p.m., Monday through Friday.
8. A maximum of ten (10) children shall utilize the outdoor play area at any one time.
9. Four (4) parking spaces shall be proved for this use. All parking shall be on-site. The parking spaces shown on the special permit plat located closest to the front lot line shall be removed.
10. The site entrance shall be designed and constructed to meet Virginia Department of Transportation (VDOT) standards for commercial entrances.
11. Adequate sight distance shall be provided as determined by the Department of Environmental Management (DEM) and VDOT.
12. Transitional screening shall be modified to allow evergreen plantings along the eastern and western lot lines; the amount and size to be determined and approved by the County Urban Forester. The play area shall be reduced in size in order to provide additional evergreen plantings within a ten (10) foot strip along the northern, northeastern and northwestern property lines, as determined and approved by the Urban Forester. The transitional screening requirement shall be waived along the southern property lines.

The existing six foot high wood fence along the northern, northeastern and northwestern property lines shall be relocated in order to provide the ten (10) foot strip of additional screening. The barrier requirement shall be waived along all other property lines.
13. All trash shall be stored on site in appropriate containers and shall be screened from view of the adjacent single family dwellings and Beacon Hill Road.
14. Any proposed lighting of the parking areas shall be in mounted on the existing structure and shall focus directly onto the subject property.

15. No free-standing signs associated with the child care facility shall be located on the subject property.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 208, October 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CONGREGATION ADAT REYIM, SPA 85-S-057-2 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 85-S-057 for church and related facilities and nursery school to permit increase in enrollment and expand hours of operation. Located at 6500 Westbury Oaks Ct. on approx. 4.22 ac. of land zoned R-5. Springfield District. Tax Map 88-2 ((13)) (6B) B and B1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Edward Lippert, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position as outlined in the staff report and said staff recommended approval.

Mr. Lippert agreed with the staff report.

There were no speakers and the public hearing was closed.

Mr. Pammel made a motion to grant SPA 85-S-057-2 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 17, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-S-057-2 by CONGREGATION DAT REYIM, under Section 3-503 of the Zoning Ordinance to permit amend SP 85-S-057 for church and related facilities and nursery school to permit increase in enrollment and expand hours of operation, on property located at 6500 Westbury Oaks Court, Tax Map Reference 88-2((13))(6B)B and B1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

Page 209, October 24, 1995, (Tape 1), CONGREGATION ADAT REYIM, SPA 85-S-057-2, continued from Page 208)

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 4.22 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-30 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Fred T. Wilburn, Certified Land Surveyor, dated October 23, 1986, revised through July 1, 1993 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED In a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The seating capacity in the main worship area shall be a maximum of 250 seats.* The nursery school shall be limited to a total maximum daily enrollment of forty (40) children.
6. The hours of operation for the nursery school shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.
7. The existing play area shall be located a minimum of ninety (90) feet from the centerline of Old Keene Mill Road. In order to reduce exterior noise levels to the standard of 65 dBA Ldn, acoustical mitigation measures shall be proved for the play area. The acoustical mitigation shall include a fence architecturally "solid" from the found up with no gaps. This fence shall be a minimum of six (6) feet in height and serve as the fencing along the northern perimeter of the play area.*
8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM and shall be a maximum of 72 spaces. All parking shall be on site and as shown on the Special Permit Plat.*
9. Parking lot lighting if installed will be in accordance with the following:
 - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - o The lights shall be a low-intensity design which directs the light directly onto the facility.

- o Shields shall be installed, if necessary, to prevent the light from projecting beyond the parking lot area.*
10. Transitional Screening 1 shall be modified along all lot lines to permit existing vegetation to fulfill the Transitional Screening 1 requirement. All parking lot landscaping and transitional screening shall be maintained in a healthy condition. Any dead or dying vegetation shall be removed and replaced as determined by the Urban Forester. Size, species and number of replacement material shall also be as determined by the Urban Forester.*
 11. The barrier requirement shall be waived.*
 12. Signs shall be permitted in accordance with the provisions of Article 12, Signs.*
 13. This approval shall not be considered to be an approval of any Phase other than Phase 1 as represented on the approved plat.*
 14. Dedication of right-of-way, a grading easement and road improvements on Westbury Oaks Court shall be provided as determined necessary by the Director, DEM, so as to provide safe site access and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, which ever occurs first.*

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previously approved conditions are noted with an asterisk.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1995. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:13 a.m. and reconvened at 10:22 a.m.

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Page 210, October 24, 1995, (Tape 1), Scheduled case of:

10:00 A.M. J.D.A. CUSTOM HOMES, INC., APPEAL 95-H-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that Outlot A is a separate lot from Lot 28 and therefore a sewage disposal system located on Outlot A to serve a dwelling on the abutting Lot 28 is not permitted under Zoning Ordinance provisions. Located at 9516 Leemay St. on approx. 39,370 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A; 28-1 ((1)) 28. (DEF. FROM 10/3/95.)

Page 211, October 24, 1995, (Tape 1), J.D.A. CUSTOM HOMES, INC., APPEAL 95-H-040, continued from Page 210)

The appellant's representative, Dennis Rice, came forward and asked that the BZA defer the application for at least ninety days to allow them to continue negotiations with the Department of Environmental Management. William Shoup, Deputy Zoning Administrator, agreed with the request and added that another issue raised by staff might become a part of the appeal. There was no one present in the Board Room to address the appeal.

Mr. McPherson made a motion to defer the appeal for approximately ninety days. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Hammack 6-0 with Mr. Ribble being absent from the meeting. Mr. Shoup suggested the morning of February 6, 1996. Hearing no objection, the Chair so ordered.

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Page 211, October 24, 1995, (Tapes 1-2), Scheduled case of:

9:30 A.M. RICHARD P. AND RANDY MITCHELL, APPEAL 95-D-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant's use of property for a food storage facility is most similar to a warehousing establishment and that such use in an R-3 District is a violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 12010 Trossack Rd. on approx. 9,009 sq. ft. of land zoned R-3. Dranesville District. Tax Map 11-3 ((3)) 184.

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the memorandum dated October 16, 1995.

Randy and Richard Mitchell, 10210 Trossack Road, Herndon, Virginia, read a prepared statement into the record outlining the basis for their appeal. They submitted a petition signed by neighbors on Trossack Road, and two letters in support from the neighbors who are the most impacted.

Mr. Dively questioned if there was an intensity level that staff used to determine a warehouse use. Mr. Shoup said there was not.

A discussion took place between the BZA and the appellant regarding the hours of pick up and the number of people who come to pick up the food for distribution. Ms. Mitchell explained how the operation worked and the companies who participated in the program. She added that the garage is used to store their vehicle and seasonal belongings.

In response to a question from Mr. Hammack, Mr. Shoup said staff had to determine what type of use in the Zoning Ordinance was most similar to the appellant's use and it was determined that it most closely resembled a warehouse use. He added that unfortunately there is nothing that is "right on point" with this type of activity in the Zoning Ordinance.

There were no speakers and the public hearing was closed.

Mr. McPherson said this was not an easy case and no one was debating the appellants' good intentions, but that he believed there was a big difference between the family operation and the sort of development and occupation that the appellants have described. He made a motion to uphold the Zoning Administrator's determination since there are other alternatives that could be investigated. The motion failed for the lack of a second.

Mr. Dively then made a motion to overrule the Zoning Administrator in this case. He said the Deputy Zoning Administrator himself said this was a judgment call situation and staff has been very frank in stating that this was a border line situation. Mr. Dively added that this was nonprofit operation, the number of vehicles involved is minimal, the storage is very temporary, and the use is a very small part of the property and could be classified as a hobby.

Mr. Pammel seconded the motion. He said with respect to this particular case the use is clearly incidental

Page 2/2, October 24, 1995, (Tapes 1-2), RICHARD P. AND RANDY MITCHELL, APPEAL 95-D-038, continued from Page 2/1)

and most importantly it is not a business and that he did not believe there was anything in the Zoning Ordinance that prohibited the use.

Mr. Hammack agreed the use was incidental and noted that the garage is not used primarily for holding and what the appellants are doing is not really illegal.

The motion carried by a vote of 5-1 with McPherson voting nay. Mr. Ribble was absent from the meeting. The decision became final on November 1, 1995.

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Page 2/2, October 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. LAYNG & COMPANY GREENHOUSES, INC., APPEAL 95-H-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant's use of property for growing and maintaining plant stock without approval of a Category 5 Special Exception, site plan or minor site plan and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 10515 Leesburg Pi. on approx. 26.49 ac. of land zoned R-1. Hunter Mill District. Tax Map 12-4 ((1)) 58.

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the memorandum dated October 17, 1995.

The appellant's attorney, Charles G. Preston outlined the basis for the appeal dealing with common sense, what the law really is, and why the staff report was incorrect. He distributed copies of Section 3-102 of the Zoning Ordinance to the BZA relating to R-1 zoning which was the basis for the appeal. Mr. Preston discussed various sections of the staff report that he disagreed with and added that he did not believe that the appellant needed to file for a special exception to allow the use to continue. He distributed copies of sections of the State law addressing the "Right to Farm Act" and a section defining horticultural and flora cultural.

The BZA questioned staff and the appellant as to why this use did not fit into the agricultural definition, if retail sales were conducted on site, and the number of trips per day to the site.

Judy Crippen, owner of the property, spoke in support of the appellant's position and said the site was used strictly for storage while the owners were in the process of developing the site.

Following comments from Mr. Shoup and Mr. Preston reiterating their positions, the public hearing was closed.

Mr. Pammel made a motion to uphold the Zoning Administrator's interpretation based on his belief that the term "plant nursery" is clearly defined in the Zoning Ordinance and there was no question as to what type of activity is taking place on the site. He added that one of the most significant aspects of a plant nursery is the intensity of activity such as traffic movement that goes back and forth from this site to where the material is sold, which is more intense than an agricultural operation. Mr. Pammel said this was an R-1 zoning district and the purpose is for single-family detached dwellings and noted that there is an area of the County that is designated as agricultural. Mr. McPherson seconded the motion.

Mr. Dively opposed the motion because he did not believe the agricultural definition in the Ordinance has specific language dealing with the restrictions to the site. Mr. Kelley also opposed the motion as he believed the appellant's arguments were compelling. Mr. Hammack agreed with the comments of the other two members and opposed the motion. Chairman DiGiulian also opposed the motion because he believed agricultural is clearly allowed under the zoning district and the use as described was clearly agricultural. The motion failed by a vote of 2-4. Mr. Ribble was absent from the meeting.

Mr. Dively made a motion to overrule the Zoning Administrator's determination for the reasons stated by the BZA members. Mr. Kelley seconded the motion which carried by a vote of 4-2 with Mr. McPherson

Page 213, October 24, 1995, (Tape 1), LAYNG & COMPANY GREENHOUSES, INC., APPEAL 95-H-037, continued from Page 212

and Mr. Pammel voting nay. Mr. Ribble was absent from the meeting. The decision became final on November 1, 1995.

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Page 213, October 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. BELL ATLANTIC NYNEX MOBILE, INC. APPEAL 95-M-052 Appl. under Sect.(s). 18-301 of the Zoning Ordinance. Appeal the determination that a proposed 180 ft. Telecommunications monopole is not in substantial conformance with the conditions of Special Exception SE 84-M-038. Located at 4400 Backlick Rd. on approx. 2.35 ac. of land zoned C-8. Mason District. Tax Map 71-1 ((1)) 90.

Kevin Guinaw, Chief, Special Projects Branch, presented staff's position as outlined in the memorandum dated October 17, 1995.

The appellant's attorney, Frank Stearns, assured the citizens who were present that this hearing was the first of many to come and the only question before the BZA was whether one of those public hearings will involve an amendment to the conditions placed on the miniwarehouse. He then proceeded to outline the basis for the appeal and discussed various sections of the staff report with which he disagreed.

The following speakers came forward to speak in support of staff's position: Wilton Ward, 7116 Jayhawk Street, Annandale, Virginia; Dale Norwood, 7107 Jayhawk Street, Annandale, Virginia; Forrest Walker, 7112 Jayhawk Street, Annandale, Virginia; Katie Idoni, Vice President of the Elan Mews Royal Court Homeowners Association consisting of 256 homeowners, 4453 Elaine Court, Annandale, Virginia; Dorothy Creed, (address not given); Freda Ward, 7113 Lanier Street, Annandale, Virginia; George W. Garand, 7201 Pine Drive, Annandale, Virginia; and, Nancy Hall, President of the Royal Homeowners Association. The speakers' opposition was based on their belief that the use would not be compatible with the surrounding residential neighborhood and one of the speakers, Mr. Ward, submitted a petition to the BZA signed by approximately thirty-five residents who opposed the installation of the monopole. The BZA informed the citizens that they had received approximately ten letters in opposition to the request.

Chairman DiGiulian asked staff and Mr. Stearns for closing remarks.

Barbara Byron, Director, Zoning Evaluation, cited Section 2-514 which states that monopoles could be permitted on a site governed by a special exception provided it was in substantial conformance with the approved special exception. It was staff's belief that the installation of a monopole on the subject property would adversely impact the surrounding residents and therefore was not in substantial conformance with the approved special exception. To locate the proposed monopole on the site, approval of a special exception amendment to the non-warehouse use would be required.

Mr. Stearns said if the residents keep an open mind he believed the appellant could prove that the use will have no adverse impact.

The public hearing was closed.

Mr. Dively made a motion to uphold the Zoning Administration's determination. He said he was acquainted with the area and that he had serious reservations about the assertion that it would not alter the character of the area. In any event, by upholding the Zoning Administrator the question would be before the Board of Supervisors as a Special Exception, which he believed was the proper forum. Mr. Pammel seconded the motion. Mr. Hammack believed that Ms. Byron's explanation was appropriate and although the Board of Supervisors may have given some rights to telecommunication facilities it also appears that it took it away with the remainder of the paragraph in Section 2-514. He agreed that the motion was appropriate in this case. The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The decision became final November 1, 1995.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Approval of October 17, 1995 Resolutions

Mr. McPherson made a motion to approve as submitted. Hearing no objection, the Chair so ordered.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Request for Change in Name for LHP Properties, Inc., S-82-S-044

Mr. Pammel made a motion to grant the applicant's request. Hearing no objection, the Chair so ordered.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Approval of 1996 BZA Meeting Dates

Mr. Pammel made a motion to approve as submitted. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the Board Auditorium would not be available on April 16, 1995 because of the Budget Hearings. The BZA asked that Thursday, April 18, 1995 be scheduled as a "if needed" date. Hearing no objection, the Chair so ordered.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Memorandum from Barbara A. Byron, Director, Zoning Evaluation Division
Appeal Period for Actions of the BZA

Mr. Pammel agreed with Ms. Byron's recommendation and made a motion to accept the procedures. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Additional Time Request for
Trustees of Jehovah's Witnesses Centreville Congregation, SP 92-Y-068

Mr. Kelley made a motion to grant the applicant's request. Hearing no objection, the Chair so ordered. The new expiration date is October 21, 1996.

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Page 214, October 24, 1995, (Tape 2), After Agenda Item:

Request for Withdrawal of Poong H. Im Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that no action was necessary. It was merely an information item.


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Page 215, October 24, 1995, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 2:30 p.m.

Minutes by: Betsy S. Hurtt

Approved on: January 2, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 31, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 317, October 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS E. CARMEL, VC 95-P-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 3016 Strathmeade St. on approx. 11,837 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((17)) 134.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Roland E. Carmel, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated October 16, 1995, outlining staff's position and stating that the applicant was requesting variances of 6.0 feet from the side lot line and 9.0 feet from the rear lot line. Mr. Hunter said staff had submitted to the Board a letter received in support of the application.

Mr. Carmel presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Hammack moved to grant VC 95-P-096 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-096 by THOMAS E. CARMEL, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 feet from side lot line and 5.0 feet from rear lot line, on property located at 3016 Strathmeade Street, Tax Map Reference 050-3((17))134, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is approximately 11,837 square feet.
4. The subdivision is old and the lots, although 11,000 square feet in area, are fairly narrow and deep and as pointed out by the applicant's attorney, in order to conform, the garage would have to be placed almost in the center of the lot, which would make it very difficult to maneuver a

vehicle in and out of it.

5. The Board has allowed detached garages to be constructed closer to the lot line in the past, as was the custom at the time this subdivision was constructed; therefore, granting this application will not change the character of the neighborhood or violate the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition a maximum of 14 feet in height at its highest point shown on the plat prepared by H. Aubrey Hawkins Associates, Ltd. dated April 21, 1995 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 219, October 31, 1995, (Tape 1), THOMAS E. CARMEL, VC 95-P-096, continued from Page 218

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 219, October 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE H. LEAKE, VC 95-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.7 ft. from side lot line. Located at 1210 Raymond Ave. On approx. 23,426 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 63.

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

Susan Langdon, Staff Coordinator, presented the staff report dated October 24, 1995, outlining staff's position and stating that the applicant was requesting a variance of 3.3 feet.

Mr. Leake presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Pammel moved to grant VC 95-D-097 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-097 by EUGENE H. LEAKE, under Section 18-401 of the Zoning Ordinance to permit construction of carport 3.7 feet from side lot line, on property located at 1210 Raymond Avenue, Tax Map Reference 030-1((05))063, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 23,426 square feet.
4. The unusual configuration of the lot, with the narrow frontage, and the location of the structure on the property towards the front of the lot, makes it almost impossible to comply with the minimum yard requirements and still maintain a structure and improvements that are compatible with the existing dwelling.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific carport addition shown on the plat prepared by Alexandria Surveys, Inc., dated July 13, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. AMERICAN PCS, L.P. AND BRANDYWINE SWIM & RACQUET CLUB, INC., SPA 67-B-568 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-B-568 for swimming pool, wading pool and bath house to permit a telecommunications facility to include a monopole. Located at 9537 Helenwood Dr. on approx. 3.04 ac. of land zoned R-2. Braddock District. Tax Map 69-1 ((4)) 1A. (IN ASSOCIATION WITH SE 95-B-061).

Chairman DiGiulian advised that the Board was in receipt of a written request for a deferral. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that it was her understanding that the Staff Coordinator and the applicant had worked out a mutually acceptable date of January 9, 1996 at 9:30 a.m. Chairman DiGiulian asked if there was anyone present who was interested in this case and heard no response.

Mr. McPherson moved to schedule the hearing for January 9, 1996 at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 221, October 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PLYMOUTH HAVEN BAPTIST CHURCH, SPA 91-V-071 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 91-V-071 for church and related facilities to permit building addition and other site improvements. Located at 8523 Fort Hunt Rd. on approx. 6.25 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((2)) 600, 601, 601A and A; 102-4 ((3)) A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. A trustee for the church, James Turner, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, introduced Elaine Z. Jensen, Staff Coordinator with the Special Exception and Rezoning Branch. Ms. Jensen presented the staff report dated October 24, 1995, outlining staff's position.

Mr. Turner presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Ribble moved to grant SPA 91-V-071 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report, as modified: Original Proposed Development Conditions 1 through 7 remained the same; 8, 9, 11, 13, and 14 were deleted and the remaining conditions were renumbered accordingly.

Mr. Hammack questioned why the maker of the motion had deleted many of the conditions. Mr. Ribble said he was familiar with the property and that most of the traffic came in through Plymouth Haven Road, making some of the conditions unnecessary in his opinion.

Mr. Pammel said he believed the geotechnical study should be conducted. He said they knew there was a problem in the area and the soils were such that there may be a slippage problem. Chairman DiGiulian said that, when the applicant submitted the site plan, the requirement could be enforced even though the Board did not include it in the special permit conditions.

Mr. Hammack asked staff about the parking lot lighting. He said he gathered that the relocated parking area would require lighting. Ms. Jensen said that the original approved permit did not show any lighting and, as a housekeeping measure, the plat shows that there is some lighting on the site; no additional lighting would be provided for the additional parking.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 91-V-071 by PLYMOUTH HAVEN BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 91-V-071 for church and related facilities to permit building addition and other site improvements, on property located at 8523 Fort Hunt Road, Tax Map Reference 102-4((2))600, 601, 601A and A; 102-4((3))A2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 6.25 acres.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc. dated June 27, 1995 and revised October 2, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity shall be three hundred seven (307). There shall be 124 parking spaces provided as shown on the special permit plat. All parking for the use shall be on site.
6. Stormwater management shall be provided on site subject to the approval of the Department of Environmental Management (DEM) in the general location shown on the special permit plat. Additional safety measures may be required at the time of site plan approval.
7. The transitional screening and barrier requirement shall be modified along the western portion of the southern property line. The purpose of this screening modification shall be to permit the approximately 80 feet of existing vegetation to serve as the required buffer. Along the northern

and eastern lot lines on Plymouth Road, a mixture of deciduous trees and evergreen shrubs shall be provided, and along the western lot line on Fort Hunt Road, a mixture of deciduous and evergreen plantings shall be provided, which will soften the visual impact of the non-residential use on the residential properties. The size, type, and location of the plantings shall be as approved by the Urban Forestry Branch of DEM. These plantings shall be deemed to satisfy the transitional screening and barrier requirements along these lot lines. The transitional screening and barrier requirements shall be waived around the perimeter of the church ballfield.

8. Adequate sight distance shall be provided at the intersection of Fort Hunt Road and Plymouth Road as determined by DEM and the Virginia Department of Transportation (VDOT).
9. No additional parking lot lighting shall be provided. The existing lights shall be shielded, if necessary, to prevent glare or nuisance light onto residentially developed properties.
10. All signs on the property shall conform to the provisions of Chapter 12.

These conditions incorporate and supersede all previous conditions.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1995. This date shall be deemed to be the final approval date of this special permit.

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Chairman DiGiulian advised that it was not yet time for the next scheduled case and the Board would go to the After Agenda Items.

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Page 223, October 31, 1995, (Tape 1), Action Item:

Approval of Resolutions from October 24, 1995

Mr. Ribble so moved and the other Board members concurred.

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Page 223, October 31, 1995, (Tape 1), Action Item:

Approval of Minutes from September 14, 1995 Meeting

Mr. Ribble so moved and the other Board members concurred.

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Additional Time Request
Colvin Run Pet-O-Tel, SPA 87-D-060
Staff recommended new expiration date of April 13, 1996

Mr. Pammel asked to have this item deferred for a week in order that he might visit the site to make a determination about the noise described by the neighbors. He said there was a continuing problem and the Board was in receipt of a number of letters. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that staff also had some concerns about the complaints concerning the noise; however, the special permit granted by the Board, required noise attenuation. Ms. Kelsey said that was the reason why staff had recommended additional time of no more than six months to give the applicant an opportunity to implement the special permit and to address the noise issue as soon as possible. She said that the previous special permit did not require noise attenuation. Ms. Kelsey stated that the attorney for the applicant was present.

Mr. Kelley said he believed he made the previous motion and remembered that the applicant planned to obtain state-of-the-art noise abatement and he would go along with that. He also pointed out that the Pet-O-Tel existed several years prior to the construction of the subdivision, although they did not deserve all that noise. Mr. Kelley said he believed the applicant should be granted a reasonable amount of time to comply and recommended that, because the time recommended by staff was only six months, and because of what Ms. Kelsey said, that the Board should approve the additional time. Mr. Hammack said he was curious about why the applicant had not been able to implement that portion of the operation in the interim of thirty months. Ms. Kelsey said, as explained in the applicants' letter, the wife had been very ill and the cost of the noise attenuation devices was much greater than had been anticipated. She directed the Board to the applicants' agent.

Sarah Hall, attorney with the law firm of Blankingship and Keith, the applicant's agent came forward to state that a site plan had been submitted and was then in Bonding; construction drawings had been proceeding when Ms. Michelitch was taken ill and still remains very ill. She said they are endeavoring to determine whether they should continue with the project and are very close to making a decision. Ms. Hall said the applicants appreciate the existing limitations and still intended to address them; however, the circumstances were beyond their control. She said she believed six months would be acceptable to the applicants. Ms. Hall pointed out that the Pet-O-Tel existed for decades before the subdivision was built.

A discussion ensued along the lines already discussed.

Chairman DiGiulian reminded the Board that there was a motion on the floor to defer the decision until next week.

Mr. Pammel said that, given Ms. Hall's explanation, he was willing to withdraw his motion and grant the six-months additional time, at which time there should be a definitive indication as to which way the applicants are going and what will happen to the facility. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Out-of-turn Hearing Request
Paul G. Munch, VC 95-V-116

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said this is just a yard variance and would not require staffing. It could not be determined what date the applicant had requested for scheduling the hearing. She suggested granting the out-of-turn hearing and said staff could call the applicant to ask why January 16 was indicated as the date for the out-of-turn hearing. Ms. Kelsey said staff was now advertising for the last meeting in December and could possibly schedule the case for that date.

Chairman DiGiulian suggested holding this item until the following week to have staff determine who had come up with the date of January 16, 1996. Ms. Kelsey agreed.

9:30 A.M. MCLEAN CHILDREN'S CENTER, L.C., SP 95-D-058 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care for church and related center and nursery school. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with VC 95-D-098). (OUT OF TURN HEARING GRANTED)

9:30 A.M. MCLEAN CHILDREN'S CENTER, L.C., VC 95-D-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a seven foot high fence to remain in the front yard. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with SP 95-D-058). (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Peter Miller with the law firm of James P. Campbell and Associates, 108 Church Street, Leesburg, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, introduced Lisa Fiebelman, Staff Coordinator with the Special Exception and Rezoning Branch. Ms. Fiebleman presented the staff report dated October 24, 1995, outlining staff's position.

Mr. Miller presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

No one came forward to speak and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 95-D-058 for the reasons set forth in the standard Resolution, subject to the Proposed Development Conditions contained in the staff report and modified to omit Proposed Development Condition 12. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were not present for the vote.

Mr. McPherson moved to grant VC 95-95-D-098 for the reasons set forth in the standard Resolution, subject to the Proposed Development Conditions contained in the staff report. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were not present for the vote.

(NOTE: The Board of Zoning Appeals reconsidered its decision later in the public hearing based on additional testimony and held another public hearing on November 9, 1996.)

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-058 by MCLEAN CHILDREN'S CENTER L.C., under Section 3-303 of the Zoning Ordinance to permit a child care center and nursery school, on property located at 1700 Great Falls Street, Tax Map Reference 30-3((1))14A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 9, 1995; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.43 acres.

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

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

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

1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John D. Jarrett, dated August 29, 1994 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum combined daily enrollment for the nursery school/child care center shall not exceed fifty (50) children. A maximum of thirty (30) children shall utilize the outdoor play area at any one time.
6. The maximum number of employees shall be limited to six (6) on-site at any one time.
7. Hours of operation shall be limited to 7:00 a.m. until 6:30 p.m., Monday through Friday.
8. The transitional screening shall be modified as follows: Existing vegetation shall remain and be maintained along the eastern, southeastern and western lot lines. Additional vegetation consisting of evergreens and deciduous trees, as determined by the Urban Forester, shall be provided along the northern and southwestern lot lines. The additional screening shall be planted inside the existing seven foot fence along the southwestern lot line.
9. The existing seven (7) foot high chain link fencing shall be maintained along the southern and western lot lines as currently provided and shall satisfy the Barrier requirement. The Barrier requirement shall be waived along the northern and portion of the eastern lot lines.
10. There shall be a sign posted at each end of the travelway designating the "entrance", the fact that the travelway is one way, and the "exit".
11. The entrance and exit shall meet the Virginia Department of Transportation Standard for commercial properties by being a minimum of 13 feet wide.
12. The applicant shall (re)design the parking area to provide for angle parking at an angle and size to meet the requirement of the Public Facilities Manual of 45°, stall width of 8.5 feet and a depth of stall of 19.0 feet. There shall be one parking space designated for accessible parking only. The number of parking spaces may be increased to eleven (11) due to the provision of angled parking and the availability of space. All parking for the use shall be on site.
13. The applicant shall provide wheel stops for each unpaved parking space, unless an alternative is approved by the Director, DEM.

14. The 4 foot high chain link fence within the property which serves as a play area barrier shall be relocated so that the play area is located a minimum of thirty (30) feet from the front lot line. The size of the play area shall be a minimum of 600 square feet.
15. If a dumpster is provided, or any other trash containers, they shall not be located in the front yard and shall be screened from the street and adjacent properties with a fence and/or landscaping.

The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special exception shall not be valid until this has been accomplished.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0-1 with Mr. Dively abstaining from the vote. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to grant VC 95-D-098 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 5, 1995.

Mr. Pammel said the structure had been in place for a number of years and the issue of ownership should be resolved in another arena.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-098 by MCLEAN CHILDREN'S CENTER L.C., under Section 18-401 of the Zoning Ordinance to permit a seven foot high fence to remain in the front yard, on property located at 1700 Great Falls Street, Tax Map Reference 30-3((1))14A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 9, 1995; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.43 acres.
4. The applicant satisfied the nine standards required for a variance.

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

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

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

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

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

1. This variance is approved for the location of the existing seven (7) foot high fence in the southeast corner of the front yard (adjacent to Great Falls Street and along the southern lot line), as shown on the plat prepared by John D. Jarrett, Land Surveyor, dated August 29, 1994, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 4-0-1 with Mr. Dively abstaining from the vote. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 228, October 31, 1995, (Tape 1), Scheduled case of:

9:30 A.M. HOLY SPIRIT LUTHERAN CHURCH, SP 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located S. and N. of the intersection of Union Mill Rd. and Twin Lakes Dr. and E. of Union Mill Rd. on approx. 3.77 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A.

Page 229, October 31, 1995, (Tape 1), HOLY SPIRIT LUTHERAN CHURCH, SP 95-S-050, continued from Page 228)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Sarah Hall, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated October 24, 1995, outlining staff's position. He pointed out the changes in the revised Proposed Development Conditions dated October 31, 1995, submitted to the Board that morning, in the event that the Board saw fit to approval the application. Staff recommended denial of the application.

Ms. Hall presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record. She stated that the architect, William Robeson, Robeson Group, Architects, 4500 Daley Drive, Chantilly, Virginia, project architects, would make a statement at the end of her presentation.

Mr. Robeson made a presentation on behalf of the applicant. He distributed two letters to the Board: One from the Bishop of the Evangelical Lutheran Church in America, Metropolitan Washington, D.C., who had some self-interest in the Board's approval and his letter was written in that vein. The other letter was authored by Supervisor Elaine McConnell, who expressed support for approval of the application.

Supervisor McConnell's presence in the room was acknowledged and she came forward to express her support for the application, stating that pre-existing drainage problems were the responsibility of the Virginia Department of Transportation (VDOT) who had not corrected them. She said the imposition of the responsibility for construction of the road constituted a hardship on the applicant to relieve the pre-existing drainage problems. Supervisor McConnell said her office would work toward getting VDOT to go back and do what they should have done for the Fosters who lived down below and were having the problem. She said she did not believe this small church would ever be any larger and imposing the road project on them would not be fair. Supervisor McConnell said she also believed the buffers around the property are not what staff had requested and she asked the Board to consider that aspect.

The following people spoke in support of the application: John Etcher, Pastor, Centreville Baptist Church; Jeffrey Wineland, resident of Little Rocky Run; Michelle Uri, Little Brook Court, elected member of the Architectural Review Board in Little Rocky Run; Linda Fitzpatrick, 6615 Rockland Drive, Little Rocky Run; Peggy Hansen, 13625 South Springs Drive, Little Rocky Run; and Pastor Andreas Armstrong, Holy Spirit Lutheran Church.

Eugene Foster, 13401 Twin Lakes Drive, 400 feet south of the subject property, came forward to speak for the group of residents along the Drive. Their concerns were stated to be: the project is massive, intrusive and not compatible with the neighborhood; a drainage problem exists along Twin Lakes Drive; the activity of the parcel will compound and exacerbate the environmental issues and the applicant failed to address the issues. Mr. Foster read a prepared statement which was incorporated into the record.

Ms. Hall came forward for rebuttal, noting that the site would have about 60% open space developed as shown on the plan.

In answer to a question from the Board, Ms. Hall said she believed the Department of Environmental Management (DEM) would address the issue of Stormwater Management at the time of site plan review and she believed it would be inappropriate to have any condition addressing Stormwater Management in a special permit.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 95-S-0-50 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions dated October 31, 1995, with the changes reflected in the Resolution.

Mr. Hammack commented that he could not have supported staff's proposed condition which would have required an agreement between the applicant and Mr. Foster because it would have entitled Mr. Foster to veto power over the special permit, in his opinion. He did, however, believe, that the applicant should take all necessary measures to prevent any exacerbation of what is recognized as a drainage problem. Mr.

Hammack said, regarding the transfer of the small residual portion of parcel 39A to the Park Authority, that it gave him a bit of a problem but, because of the unique situation, he would support it. Mr. Hammack noted that transferring the parcel meant that the Board effectively would grant an FAR that exceeds what is allowable in the area, from a 0.8 to a .010, which he normally would not support. He said that, given the nature of the abandonment of old Twin Lakes Drive, the realignment and the small residual, .22066 acres (they are receiving credit for it in the development but allowing it to be transferred), he was somewhat troubled. He said, however,

that he could not remember seeing a situation quite like this in the number of years he had been on the Board and would support the application anyway.

Mr. Pammel said that, historically, the County had treated institutional uses as transitional, as reflected in references by staff and the Comprehensive Plan. He said that he could think of nothing more appropriate than a church/institutional use being a transition that meets the purposes of the Comprehensive Plan. Mr. Pammel referred to the applicant having provided an 80-foot transitional area to the west, between their development parking lot and the Little Rocky Run development, comprised of a vegetated area far in excess of what is required by the Ordinance. He referred to staff's suggestion that an FAR of 0.8 is a little too high and said that, even if they take out the residual portion, the fact remains that 0.8 is the allowable FAR, which is 20% below what is permitted by right in the district.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-S-050 by HOLY SPIRIT LUTHERAN CHURCH, under Section 3-C03 of the Zoning Ordinance to permit a church and related facilities, on property located south and north of the intersection of Union Mill Road and Twin Lakes Drive, Tax Map Reference 66-1((1))17 and 66-3((1))39A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is approximately 3.77 acres.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the

special permit plat prepared by Robson Group Architects dated June 28, 1995, revised through October 2, 1995 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat, all applicable provisions of the Zoning Ordinance and the Public Facilities Manual, and these development conditions.
5. The maximum seating capacity in the main area of worship shall be 300.
6. All parking for this use shall be on site.
7. To the maximum extent possible, twenty-five feet of existing vegetation shall be maintained and supplemented along the Twin Lakes Drive frontage of the site and shall satisfy Transitional Screening 1. To the maximum extent possible, existing vegetation shall be used in order to satisfy the transitional screening requirement (Transitional Screening 1) along the entire southern property line.

A landscape plan shall be submitted for approval to the County Urban Forester at the time of site plan review detailing the size and type of plantings to be provided.

Interior parking lot landscaping shall be provided as shown on the special permit plat. Tree species with large canopy coverage should be provided in the parking lot in order to increase shade. The Urban Forestry Branch may require substitutions of suitable plant materials instead of those shown on the plant list.

The barrier requirement shall be waived.

8. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be substantially in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DEM, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM.
9. Notwithstanding notes No. 7 and 17 on the special permit plat, limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch. Best efforts shall be used to design the SWM/BMP facility so as to minimize its size and to preserve to the maximum extent possible tree save area along in addition to that shown by the limits of clearing and grading on the plat.
10. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of existing mature trees. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utility lines, trails, etc. that can not be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public

Facilities Manual (PFM).

11. A geotechnical engineering study shall be provided, if deemed necessary by the Department of Environmental Management (DEM) and the recommendations of DEM shall be implemented.
12. Stormwater Best Management Practices (BMPs) shall be provided as determined by the Department of Environmental Management (DEM) at time of site plan approval in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

The applicant shall construct the proposed stormwater management pond during the initial land-disturbing phase to provide control for runoff and sediment discharge.
13. Right-of-way to 26 feet from the centerline of Twin Lakes Drive shall be dedicated for public street purposes. The applicant shall provide all ancillary easements which may be necessary to facilitate the future (re)construction of Twin Lakes Drive at the time of such (re)construction.
14. A right turn deceleration lane shall be provided on Twin Lakes Drive and shall be designed and constructed to a standard as required by the Department of Environmental Management (DEM) and VDOT.
15. Ancillary easements along Union Mill Road shall be provided in order to facilitate future road improvements at the time such improvements are undertaken.
16. Adequate sight distance shall be provided as determined by the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT).
17. The small triangular portion of the subject property located on the north side of Twin Lakes Road shall be used for open space only; however, it may be transferred to Fairfax County Park Authority without amendment to this Special Permit.
18. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
19. Signs shall be permitted provided they are erected in accordance with the provisions of Article 12. Signs shall be located so as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.
20. The applicant shall implement any drainage control measures to prevent exacerbation of the existing drainage and siltation problems as required by DEM.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without any notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the

amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-1. Mr. Dively abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1995. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:30 a.m. and reconvened at 10:45 a.m.

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Page 233, October 31, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MCLEAN CHILDREN'S CENTER, L.C., SP 95-D-058 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care for church and related center and nursery school. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with VC 95-D-098). (OUT OF TURN HEARING GRANTED)

9:30 A.M. MCLEAN CHILDREN'S CENTER, L.C., VC 95-D-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a seven foot high fence to remain in the front yard. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with SP 95-D-058). (OUT OF TURN HEARING GRANTED)

Mary Llewellyn, 1650 Great Falls Street, McLean, Virginia, came to the podium to request reconsideration of cases heard previously that morning. The reason given for the request was that the individuals in opposition could not get a wheelchair for one of them who needed it to get to the Board Room. She said she had information for the Board which was important to the issues. Ms. Llewellyn said that the subject property was owned by her; she said she bought it in 1959 and still owned it. She said she was in the process of going to court because of a question about the title on the subject property.

Mr. Pammel said that, under the circumstances, he moved that the Board reconsider their decision on the two cases. Mr. Ribble seconded the motion which carried by a vote of 4-1-2. Mr. Kelley voted nay. Mr. McPherson and Mr. Dively abstained.

Chairman DiGiulian asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, to suggest a date for scheduling the reconsideration. She said it could be heard on December 12, 1995 at 9:00 a.m. Mr. Pammel so moved. Mr. Ribble requested that staff ensure the availability of a wheel chair at that time.

Mr. Dively asked if the applicant had left the facility and was told that he had. He questioned that the applicant's reasonable assumption that the Board had granted the requests and the need for a reconsideration at the very next meeting when the Resolution would come before the Board for approval. Mr. Kelley said that was the reason why he had voted nay, because the applicant should have a chance to respond. Chairman DiGiulian said he believed that the opposition had a right to make their presentation because they were on the property but could not get to the Board Room. Mr. Dively asked that the hearing of the reconsideration be expedited because it did not require any staffing. Mr. Kelley suggested reopening the hearing the following week. Ms. Kelsey advised that a reconsideration must be readvertised. She advised that it was December 5, 1995. Mr. Kelley said he believed the Board could vacate the previous decision and reopen the hearing to continue to hear the cases the following week. A discussion ensued.

Karen Harwood of the County Attorney's Office was present and advised that, because the Board of Zoning Appeals (BZA) relied upon statutes and its decisions triggered appeal rights to anyone aggrieved or taking issue with decisions, according to a calendar clock, she believed they had to readvertise a reconsideration. She said they could not simply wipe out a decision, nor could they operate solely

according to Roberts Rules of Order, because of the statutory appellate. Mr. Hammack referenced the Board's established procedure, which he said the County Attorney's Office had assisted in developing. He noted that the Resolutions did not become effective until eight days after the actual vote; therefore, they could reconsider. Ms. Harwood said that was true and changed her position. Ms. Kelsey noted that Patrick Taves of the County Attorney's Office had previously advised the Board that, if they wished to reconsider a complete decision, they were required to readvertise. Ms. Harwood suggested getting a consensus from within the County Attorney's Office and asked Ms. Kelsey if that would still allow sufficient time to advertise for a December 12 hearing. Ms. Kelsey said that would allow sufficient time. Ms. Harwood said she would get an opinion after she has had an opportunity to further review this question about vacating or rescinding the Board's decision and taking it up again the following week, while getting a confirmation as to whether or not the hearing had to be readvertised in view of the fact that the decision would not be final for eight days hence. A discussion ensued, reviewing the previously stated information.

Mr. Hammack clarified that Chairman DiGiulian had called for anyone in opposition to come forward; therefore, the only opposition they would hear would be the two persons in question, who had trouble getting to the Board Room.

Mr. Ribble moved to act according to Ms. Harwood's suggestion and take up the matter the following week, November 9, 1995, at 9:00 a.m. Mr. Pammel seconded the motion. Mr. Kelley observed that the next meeting was nine days away and the consensus of the Board was that, because they had vacated the decision, there was no problem. Ms. Kelsey read from the Board's established procedures that, "...The decision does not become final until the day following the next official meeting day of the BZA but not less than eight days...." Chairman DiGiulian advised that the motion carried.

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Page 234, October 31, 1995, (Tape 2), Scheduled case of:

9:30 A.M. ROBERT E. MCKIM AND ALMA S. MCKIM, APPEAL under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the violation of the outside storage limitations cited in a January 22, 1992 Notice of Violation recurred and/or continued as of the March 16, 1995 Notice of Violation. Located at 10001-A Hampton Hunt Rd. on approx. 8.47 ac. of land zoned R-C. Springfield District. Tax Map 105-2 ((1)) 9A. (DEF. FROM 9/12/95).

Frederick H. Goldbecker, Esquire, Box 517, Fairfax, Virginia, came forward to represent the appellant.

William E. Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated October 20, 1995. He emphasized that, when the Board of Zoning Appeals (BZA) accepted the appeal, the scope of the appeal was limited to the determination that the violation recurred and/or continued as of the March 16, 1995 notice and inspections revealed that some of the same items were still located at the front of the property. Mr. Shoup referenced photos which were submitted to the Board by staff, stating that the photos were taken in September and October of 1995, after the appeal had been filed; however, they represented the same storage present at the time of the March 16, 1995 notice. He said it was staff's determination that the violations did continue.

Mr. Goldbecker presented the arguments forming the basis of the appeal, submitted in writing and incorporated into the record.

Karen Harwood of the County Attorney's Office addressed the legal aspects of the appeal, stating that the question was whether or not the McKims, at this stage, could raise non conforming rights claims to whether or not they had a pre-existing (to the Ordinance use restrictions on outside storage) right, to store items in their back yard or on their property. She said that the constitutionality of the Ordinance cannot now be raised and cited the *Alward* and the *Collier* cases; i.e., back when they were noticed for the violations in 1992, they had thirty days to file an appeal if they took issue with the Zoning Administrator's determination that the storage was in violation of the Ordinance. She said they elected not to file that appeal. Ms. Harwood referenced the copy of the *Collier* case which she said she had given to the Board

members and which she said builds on the *Alward* case. She said that the two cases support the proposition that a land owner, or one who is cited for a violation, must exhaust their administrative remedies, such as appealing to the BZA, if they claim that they are aggrieved by a determination of the Zoning Administrator. If the land owner does not do that, what the Zoning Administrator says is a violation is a thing decided and cannot be challenged subsequently. Ms. Harwood said that was exactly the case in the appeal before the Board. She read from a citation, stating that what she had just said "...is based on the subtle rule that exhaustion of administrative remedies where zoning ordinances are involved is essential before a judicial attack may be mounted against the interpretation of such ordinances...." Ms. Harwood said the McKims were challenging the interpretation of the Ordinance, its application to them, and raising non-conforming use issues.

Ms. Harwood noted Mr. Goldbecker's reference, in his presentation, to an amendment to the Code of Virginia made subsequent to the time of the notices, which came down during either the last session of the General Assembly or two sessions ago. It said that, "...non conforming use determinations by the Zoning Administrator need the concurrence on the law with the local government attorney...." Ms. Harwood said that statute did not exist in 1992 when the Notice of Violation was issued, and that Act of Assembly that amended the Code at that time specifically said that the new Code provision applied prospectively only to decisions made after July 1st of that year; therefore, the Code amendment did not apply.

Mr. Shoup referenced the representation made about the vehicles not being considered storage and called the Board members' attention to the photos which he believed clearly showed some of the vehicles to be "junk" and inoperable, which qualified them as outside storage. He said that, if the vehicles were operable, staff would not be considering them to be part of the limitation on outside storage.

Mr. Goldbecker came forward for rebuttal, referencing the second part of allegation 9, at page four, referring to screening from view the first story window of all neighboring dwellings and by limiting the outside storage to a total area not exceeding 100 square feet. He said the question of storage was raised and the rule on *res judicata*, as a general outline, is that any matter that could have been litigated or should have been litigated between parties when there is the identity of the parties and the identity of the issues, is barred by *res judicata* from going to the court a second time. He said that, in this matter, there is a question of the constitutionality of the limitation that is unreasonable with no substantial relationship to public health, safety and welfare.

Mr. Dively asked Mr. Goldbecker if he could cite a case on a *res judicata* ruling and Mr. Goldbecker said he could not. He said he would refer Mr. Dively generally to cases found in Michie's Jurisprudence under *res judicata*. Mr. Goldbecker offered to provide a citation later that afternoon if the Board so wished.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer the motion for a week in order to read the memorandum submitted that morning by Mr. Goldbecker, as well as the memorandum from Mr. Shoup. Mr. Dively said that the only issue he was interested in was *res judicata*; if he were provided with a citing supporting that issue, it might affect his judgement. Mr. Hammack concurred with Mr. Dively's comments on that point.

Chairman DiGiulian asked if the motion was to defer the vote only and Mr. Hammack replied that it was, unless Mr. Goldbecker could provide the members with some citations on the subject in the interim. Mr. Goldbecker reiterated that he would furnish the promised citation that afternoon or the next morning and Mr. Dively requested that he also provide same to the County Attorney's Office. Mr. Dively seconded the motion which carried by a vote of 7-0.

Ms. Harwood requested permission to respond next Thursday to Mr. Goldbecker's submission(s) and Chairman DiGiulian granted her request.

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Page 236, October 31, 1995, (Tape 2), Scheduled case of:

9:30 A.M. O. CARL AND ELIZABETH S. HERING, APPEAL 95-D-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the appellant has erected a 7 ½ ft. high brick wall and a 10 ft. high gate structure in violation of the Zoning Ordinance provisions. Located at 10821 Nicholsridge Rd. on approx. 5.10 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((2)) 9.

Mr. Dively noted that the Board members had a letter requesting withdrawal. He so moved. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 236, October 31, 1995, (Tape 2), Scheduled case of:

9:30 A.M. YOSUF M. AND ZARLASHT MIR, Appeal 95-S-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the violations for maintaining multiple dwelling units, the multiple occupancy of a dwelling unit, the parking of commercial vehicles and the occupancy of an accessory structure, as cited in previous Notices of Violation dated November 17, 1993 and June 16, 1994, were continuing as of the dates of inspection referenced in the June 7, 1995 Notice of Violation. Located at 9290 Mainsail Dr. on approx. 8,534 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-2 ((26)) 179.

Carl J. Arbes, Esquire, attorney for the applicants, came forward.

William E. Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memoranda dated October 23 and October 30, 1995.

Mr. Arbes presented the arguments forming the basis for the appeal, submitted in writing and incorporated into the record.

Janet Reiss, Architect, 8808 Pear Tree Village Court, Alexandria, Virginia, said she had been retained by the applicants. She submitted a drawing of the dwelling and showed view graphs which she said were based upon her observations the previous June and the previous week, depicting only two kitchens on the property and outlining her interpretation of the layout of the dwelling and environs. Mr. Hammack asked if she had inspected the garage and the shed and she said she had and had not noticed anyone living there and found no provisions for a kitchen, only evidence of a tool shed. When asked again about the garage, Ms. Reiss said she found it to contain a chapel.

Mr. Shoup asked that the view graphs be retained and made a part of the record and Chairman DiGiulian so ordered.

Yosuf M. Mir acted as interpreter and introduced his mother, Khuya Mir, a resident of the subject property, whose testimony he said had been submitted in writing the previous day.

Mr. Dively asked the speaker through the interpreter how many people now lived in the house and the reply was: with two children, eight people lived there. Mr. Dively asked how many people lived in the house in May and the reply was the same.

Mr. Hammack asked what the relationships were between the people living on the property and the answer was that they were family. Mr. Hammack asked for specifics and Mr. Mir furnished their names and relationships to the applicants: nephew, cousin, wife's sister, wife, father, daughter, son.

Mr. Dively asked about the commercial vehicles and the applicant's mother said the father was the governor of Kabul, Afghanistan, and they were visited by Afghan people who drove taxis but who did not live with them.

Mr. Dively asked again how many commercial vehicles were parked on the property. The mother said none. He asked how many were parked there in May and the mother again said none, only visitors.

Page 237, October 31, 1995, (Tape 2), YOSUF M. AND ZARLASHT MIR, Appeal 95-S-039, continued from Page 236)

Mr. Hammack inquired if a person named Elizabeth Clavijo was living there in May with her husband. The mother said no. Mr. Hammack asked if the affidavit stating that Ms. Clavijo was living there was wrong. The mother said she did not know. Chairman DiGiulian said he believed that the applicant's previous testimony was that Ms. Clavijo was pregnant and did not have a place to live so they were helping her by allowing her to live there. The mother said they allowed Ms. Clavijo to stay there at the beginning of the year for four or five months but when she brought too many "guys" into the house they kicked her out because it offended them as Muslims. That was before the applicant came. Mr. Hammack asked if the guys spent the night at the house and the mother said they would stay late, make a lot of noise and then leave. Mr. Hammack asked what time they would leave and the mother said they would leave at approximately 11:00 or 12:00 at night.

The next speaker was the applicant's father, Abdul Mir, of the subject address. He testified that he was the governor of Kabul in Afghanistan and also worked there before coming to the United States; he was upset and alleged Inspector Setliff of the Zoning Enforcement Branch said he was a Police Officer. Mr. Dively asked how Mr. Setliff was able to communicate that he was a Police Officer when the father could not understand English. The father said Mr. Setliff showed him a card claiming he was a Police Officer. Mr. Hammack asked how he could read it. The father said he could not read it. Chairman DiGiulian asked if the father assumed Mr. Setliff was a Police Officer. The father said that a visitor at the house said Mr. Setliff was a Police Officer and Mr. Setliff went all over the house, making him ashamed in front of his visitor. Mr. Hammack asked if the Police Officer was in uniform and the father said no. Mr. Hammack asked the applicant if his father was now changing his testimony and that he now realized that Mr. Setliff was not a Police Officer and the applicant said that was what his father was saying.

Jim Gautier, President, Indian Oaks Homeowners Association spoke in opposition to the appeal. His testimony included the following comments: The process of rebuilding the house and people coming and going had been going on since October 1992, with the involvement of Zoning Enforcement, Elaine McConnell's Office, meeting with the applicants and representative to emphasize that the development is comprised of single family dwellings and neighbors requested that the applicants observe the limitations of single family dwellings; recent conversations with the postal carrier revealed 58 name on the list of people receiving mail at the subject address; people and vehicles come and go at all times of the day and night; many for-hire vehicles associated with the applicants' residence by neighbors' observations recently have been parked over at the Rolling Valley Park and vehicles parked in the area of the residence have been declining somewhat as the monitoring process has gained momentum.

Zariasht Mir, co-owner of the subject property, spoke in support of the appeal and complained about the inspections of the property by County personnel. In answer to questions from the Board members, she said they had only two roomers in the past for a short period. Her sister lived there occasionally and other people only visited.

Juliette Whelan, 9401 Wooded Glen, Treasurer of the Wooded Glen Homeowners Association and Tom Pierpoint, Indian Oaks, 9333 Mainsail Drive, spoke in opposition, stating that a letter had been delivered to Leslie Setliff the previous day with twenty signatures in opposition to the appeal; taxi cabs had been seen continuously on the subject property from as early as 7:00 a.m. and numerous people coming and going at all times of the day and night; because of the location of the subject property, almost all the residents of the neighborhood pass it on a daily basis, as early as 5:30 a.m. and late in the evening, observing the number of parked vehicles at all time during the day; there are a lot of turnovers but the same vehicles, taxi cabs and late model cars, are consistently observed for three to six months; besides automobiles of the property owners, there are typically four to five private vehicles and one to three taxi cabs both during the week and on week-ends; no vehicles with diplomatic plates have been observed; neighbors have consistently complained to appropriate County personnel since October 1992 and the complaints have either had a short-term affect or no affect.

Steve McNeil spoke in support of the appeal, stating he had done some work on Mr. Mir's dwelling; the house is not in disrepair; it is well-kept; he had seen one taxi cab there in the last six months; he had not seen any violations.

Page ~~237~~ 238, October 31, 1995, (Tape 2), YOSUF M. AND ZARLASHT MIR, Appeal 95-S-039, continued from Page 237)

Others speaking in opposition were: Pat Stevenson, 9442 Wooded Glen Avenue and Matt Thompson, 9331 Mainsail Drive. They testified that ten cars were parked in the driveway and surrounding area at the subject property that morning at 9:00 a.m., three of them taxis (two in the driveway); neighbors are familiar with family owned cars and there are no other buildings that could have an association with the numerous vehicles which after a time have become familiar to the neighbors in their association with the subject property and were described by make and model and identifying damage, etc.; three Mid-eastern looking young ladies in a black car with a State University of New York sticker and a NOVA sticker walking around the side of the house as if to gain entrance in the back; a heavy-set white woman with a young child also were seen acting as if the children were going off to school, etc., a young black lady who was school teacher at White Oaks Elementary lived there for a while; the houses in the subdivision did not match the description given by the appellants' attorney of the interior of the subject dwelling.

Mr. Aziz, Springfield, Virginia, spoke in support of the appeal.

Yosuf Mir asked to be heard and spoke in support of his appeal, claiming prejudice by neighbors and disclaiming violations.

Mr. Shoup spoke in rebuttal, stating that all observations of the house and in the house were done with the permission of the occupants. What the architect had presented was fairly consistent with the sketches in the staff report, they only happened to call them different things; i.e., what was called the chapel was definitely designed and arranged as a dwelling unit. Mr. Shoup further said that all of the units had separate access from the outside and staff believed they met the definition of dwelling units. Based on conversations and tag numbers, staff believed there were many more than eight people living at the address. He submitted photos of the taxis taken in May, which were representative of what had been observed by staff on numerous other occasions. Mr. Shoup said staff had observed people residing in the storage shed.

Mr. Arbes came forward for rebuttal and denied the violations.

Mr. Pammel commented on the length of the hearing and the amount of testimony presented on both sides. He referenced the documents submitted for the Board's review, stating it was very clear from the naming of the individuals residing on the property, that there is more than one family and, from the testimony of the owners, there are two kitchens which create a two-family dwelling. He said that there had been no special permit obtained for the secondary accessory dwelling unit for the accommodation of the parents of the owner. Based on that representation, a violation of the Zoning Ordinance did exist. Mr. Pammel said the preponderance of testimony clearly indicated that there is more than one family residing on the premises and there are a number of vehicles depicted in photos taken by the Zoning Administrator, including two taxi cabs, which clearly violates the Zoning Ordinance. He said that, based on the testimony, the Board supported the position of the Zoning Administrator and he so moved.

Mr. Hammack seconded the motion, stating that some of the appellants' own testimony supported the Zoning Administrator's position. They had submitted documents showing nine people to be living on the premises and he believed that part of the problem was their own (mis)understanding and (mis)interpretation of what the Ordinance said, especially regarding the definition of family.

The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page ~~238~~ 238, October 31, 1995, (Tape 3), Scheduled case of:

10:00 A.M. COUNTRY DEVELOPERS, INC., APPEAL 95-H-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected an off-site real estate directional sign which exceeds 3 sq. ft. in area and 4 ft. in height in violation of Zoning Ordinance provisions. Located at 1505 Victoria Farms Ln. on approx. 2.06 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((9)) 15. (DEFERRED FROM 9/12/95 FOR NOTICES)

Mr. Pammel moved to accept the request for withdrawal of the application. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Minutes by: Geri B. Bepko

Approved on: May 7, 1996

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

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

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Thursday, November 9, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Marilyn Anderson, Senior Staff Coordinator, was present in the absence of the Branch Chief, Jane Kelsey.

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Page 241, November 9, 1995, (Tape 1), Scheduled case of :

9:00 A.M. MCLEAN CHILDREN'S CENTER, L.C., SP 95-D-058 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center and nursery school. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with VC 95-D-098). (OUT OF TURN HEARING GRANTED)

9:00 A.M. MCLEAN CHILDREN'S CENTER, L.C., VC 95-D-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a seven foot high fence to remain in the front yard. Located at 1700 Great Falls St. on approx. 1.43 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. (Concurrent with SP 95-D-058). (OUT OF TURN HEARING GRANTED)

Karen Harwood from the County Attorney's office addressed the Board of Zoning Appeals (BZA) and said that the issue before the BZA was whether the BZA wanted to reconsider its decision of last week and if so, the hearing would have to be advertised. She said the consensus of the County Attorney's office strongly suggested that the case be readvertised because anything the BZA does has to be advertised. Ms. Harwood suggested the BZA first listen to the speakers to determine if anything would be said that would cause them to change their decision of last week.

Mr. Hammack said the Board felt that they did not need to readvertise because all the speakers were present except for the two opposition speakers who were not able to get into the Board Auditorium. He said the only other party that would have an interest in the reconsideration would have been the applicant and staff was asked to notify them.

Mr. Kelley said he did not see any difference from hearing a case and continuing it or what the Board would do in any other instance. Ms. Harwood said the difference would be that, in this case, a decision was rendered.

In response to Mr. Hammack's question, staff replied the applicant was notified and informed of the reason for the reconsideration.

Mr. Miller, the applicant's agent, said he received a fax but was confused about what was going on.

Mr. Hammack explained that Mrs. Fritz had attempted to obtain a wheelchair in order to attend the hearing but had been unsuccessful; therefore, she had not entered the Board Auditorium until after the case had been acted upon. He said for that reason the Board believed it would be appropriate to reconsider the case and allow the citizen an opportunity to speak because everyone else was given a chance to speak.

Mr. Hammack moved to go forward with the public hearing. It was seconded by Mr. Pammel and carried by a vote of 4-0-1, with Mr. Dively abstaining from the vote, Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

Chairman DiGiulian called for speakers.

Ms. Fritz said that traffic conditions and moving the play yard closer to Great Falls street caused her concern.

Ms. Llewellyn discussed the history of ownership of the subject property and said she owned it. She submitted a deed of the property and a letter from the Department of Environmental Management to the Board.

Mr. Miller addressed the speakers' concerns in his rebuttal. He submitted deeds of the property to the Board.

Chairman DiGuilian closed the public hearing.

Mr. Hammack said there seemed to be an underlying dispute with respect to the ownership of the property but he was not convinced that the Board should deny the application. He moved to grant SP 95-D-058 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-058 by MCLEAN CHILDREN'S CENTER L.C., under Section 3-303 of the Zoning Ordinance to permit a child care center and nursery school, on property located at 1700 Great Falls Street, Tax Map Reference 30-3((1))14A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 9, 1995; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.43 acres.

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

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

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

1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John D. Jarrett, dated August 29, 1994 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum combined daily enrollment for the nursery school/child care center shall not exceed fifty (50) children. A maximum of thirty (30) children shall utilize the outdoor play area at any one time.
6. The maximum number of employees shall be limited to six (6) on-site at any one time.
7. Hours of operation shall be limited to 7:00 a.m. until 6:30 p.m., Monday through Friday.
8. The transitional screening shall be modified as follows: Existing vegetation shall remain and be maintained along the eastern, southeastern and western lot lines. Additional vegetation consisting of evergreens and deciduous trees, as determined by the Urban Forester, shall be provided along the northern and southwestern lot lines. The additional screening shall be planted inside the existing seven foot fence along the southwestern lot line.
9. The existing seven (7) foot high chain link fencing shall be maintained along the southern and western lot lines as currently provided and shall satisfy the Barrier requirement. The Barrier requirement shall be waived along the northern and portion of the eastern lot lines.
10. There shall be a sign posted at each end of the travelway designating the "entrance", the fact that the travelway is one way, and the "exit".
11. The entrance and exit shall meet the Virginia Department of Transportation Standard for commercial properties by being a minimum of 13 feet wide.
12. The applicant shall (re)design the parking area to provide for angle parking at an angle and size to meet the requirement of the Public Facilities Manual of 45°, stall width of 8.5 feet and a depth of stall of 19.0 feet. There shall be one parking space designated for accessible parking only. The number of parking spaces may be increased to eleven (11) due to the provision of angled parking and the availability of space. All parking for the use shall be on site.
13. The applicant shall provide wheel stops for each unpaved parking space, unless an alternative is approved by the Director, DEM.
14. The 4 foot high chain link fence within the property which serves as a play area barrier shall be relocated so that the play area is located a minimum of thirty (30) feet from the front lot line. The size of the play area shall be a minimum of 600 square feet.
15. If a dumpster is provided, or any other trash containers, they shall not be located in the front yard and shall be screened from the street and adjacent properties with a fence and/or landscaping.

The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special exception shall not be valid until this has been accomplished. Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0-1 with Mr. Dively abstaining from the vote. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to grant VC 95-D-098 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 5, 1995.

Mr. Pammel said the structure had been in place for a number of years and the issue of ownership should be resolved in another arena.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-098 by MCLEAN CHILDREN'S CENTER L.C., under Section 18-401 of the Zoning Ordinance to permit a seven foot high fence to remain in the front yard, on property located at 1700 Great Falls Street, Tax Map Reference 30-3((1))14A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 9, 1995; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.43 acres.
4. The applicant satisfied the nine standards required for a variance.

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

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

restrict all reasonable use of the subject property, or

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

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

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

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

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

- 1. This variance is approved for the location of the existing seven (7) foot high fence in the southeast corner of the front yard (adjacent to Great Falls Street and along the southern lot line), as shown on the plat prepared by John D. Jarrett, Land Surveyor, dated August 29, 1994, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 4-0-1 with Mr. Dively abstaining from the vote. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Chairman DiGuilian called for After Agenda Item #5.

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Page 245, November 9, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
Vale United Methodist Church, SPA 73-C-182-2

Robert Lawrence, the applicant's agent, said the reason for the Out of Turn hearing request was that the church had employed people to work in the school because they did not know the public hearing process was required for this use. He said the request was only for 36 students and there was no new construction proposed. Mr. Lawrence said the application did not need extensive review by the staff and that he would appreciate the earliest hearing date possible.

Mr. Pammel moved to schedule the public hearing for December 19, 1995, it was seconded by Mr. Dively. The motion carried by a vote of 5-0 with Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting.

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Page 245, November 9, 1995, (Tape 1), Scheduled case of :

9:00 A.M. ALFRED GARRISON - GFE SERVICE CENTER, Appeal 95-M-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental

Page 246, November 9, 1995, (Tape 1), ALFRED GARRISON - GFE SERVICE CENTER, Appeal 95-M-049, continued from Page 245)

vehicles) in violation of the Zoning Ordinance provisions. Located at 5837 Columbia Pi. on approx. 1.95 ac. of land zoned C-8 and SC. Mason District. Tax Map 61-2 ((1)) 113.

William Shoup, Deputy Zoning Administrator, said staff met with Mr. Garrison and he indicated that the use had been discontinued and there was a new tenant on the property. Mr. Shoup recommended that the Board dismiss the appeal. Mr. Pammel moved to dismiss Appeal 95-M-049. It was seconded by Mr. Kelley and carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 246, November 9, 1995, (Tape 1), Scheduled case of :

9:00 A.M. CHARLOTTE A. HEATH, Appeal 95-D-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that an accessory structure located at 916 Peacock Station Rd. is being used for a ceramic school in violation of Par. 1 of Sect. 2-303 of the Zoning Ordinance. Located at 916 Peacock Station Rd. on approx. 4.18 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 20.

William Shoup, Deputy Zoning Administrator, said the appeal was of the same issue as the Jocelyn and Michael Brittin appeal, Appeal Number 95-D-043. He said Ms. Heath operated the use and the Brittins owned the property. Since Ms. Heath did not do the notices, Mr. Shoup recommended dismissal of the Heath appeal with the issue to be considered under the Brittin appeal.

Mr. Pammel moved to dismiss the Charlotte A. Heath Appeal 95-D-042, and to proceed with the hearing on the Jocelyn and Michael Brittin Appeal 95-D-043. It was seconded by Mr. Hammack and carried by a vote of 4-0 with Mr. Kelly and Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting.

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Page 246, November 9, 1995, (Tape 1), Scheduled case of :

9:00 A.M. JOCELYN WEST BRITTIN AND MICHAEL D. BRITTIN, Appeal A 95-D-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is allowing the use of an accessory structure as a ceramic school in violation of Par. 1 of Sect. 2-303 of the Zoning Ordinance. Located at 916 Peacock Station Rd. on approx. 4.18 ac. of land zoned R-E, Dranesville District. Tax Map 19-2 ((1)) 20.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated October 30, 1995.

Michael D. Brittin, 916 Peacock Station Road, presented the arguments forming the basis of the appeal. He said he felt the violation was a technical issue.

Charlotte Heath, 910 Peacock Station Road, and Suzanne Welch, abutting property owner, spoke in support of the appellant's position.

The BZA members discussed the use of the property with Mr. Brittin.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said there were two parties undertaking an activity on the subject property, there was a resident who inhabited a single family structure and the individual, Ms. Heath, who occupies the studio and has a school and makes pots. He said unfortunately there were situations where the Board has had testimony of a personal nature and in this case there was sympathy for Ms. Heath and her concerns, but the job of the Board was to interpret the Zoning Ordinance as it was written and the Board does not have

Page 247, November 9, 1995, (Tape 1), JOCELYN WEST BRITTIN AND MICHAEL D. BRITTIN, Appeal A 95-D-043, continued from Page 246

the flexibility to make decisions based on anything other than what is contained in the Ordinance. Mr. Pammel said, in his opinion, the language of the Ordinance was perfectly clear, therefore, Mr. Pammel moved that the Board uphold the position of the Zoning Administrator in this case. The motion was seconded by Mr. Hammack and carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. McPherson was absent from the meeting.

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Page 247, November 9, 1995, (Tape 1), Scheduled case of :

9:00 A.M. GREGORY L. AND SANDRA M. MCKINNEY, Appeal 95-D-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant has erected a child's play structure (accessory structure) closer to the side and rear lot lines than allowed under the Zoning Ordinance provisions. Located at 7305 Redd Rd. on approx. 15,782 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-3 ((21)) 22.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated October 30, 1995. Mr. Shoup submitted photographs of the accessory structure to the Board.

Gregory McKinney, the appellant, presented the arguments forming the basis for the appeal.

In response to Mr. Kelley's question, Mr. McKinney said staff advised him to apply for a Special Permit but it was after he had submitted the appeal.

Mr. Dively and staff discussed the processing time of a Special Permit application.

Mr. Kelley moved to defer the public hearing for decision only to give the appellant time to apply for a Special Permit. It was seconded by Mr. Dively and carried by a vote of 5-0 with Mr. Ribble not present for the vote and Mr. McPherson absent from the meeting. The public hearing was scheduled for the morning of May 7, 1996.

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Page 247, November 9, 1995, (Tape 1), Scheduled case of :

9:30 A.M. ROBERT E. MCKIM AND ALMA S. MCKIM, APPEAL 95-S-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the violation of the outside storage limitations cited in a January 22, 1992 Notice of Violation recurred and/or continued as of the March 16, 1995 Notice of Violation. Located at 10001-A Hampton Hunt Rd.. on approx. 8.47 ac. of land zoned R-C. Springfield District. Tax Map 105-2 ((1)) 9A. (DEF. FROM 9/12/95).

Frederick H. Goldbecker, attorney for the appellant, presented the arguments that related to the legal issue of res judicata which he raised at the previous hearing and discussed the documents he submitted to the Board on that issue.

Karen Harwood with the County Attorney's office, outlined the reasons why the Zoning Administrator's position was legally correct.

Mr. Goldbecker gave a rebuttal pertaining to Ms. Harwood's statements.

Chairman DiGuilian closed the public hearing. Mr. Dively said Mr. Goldbecker made a valiant argument. However, upon a closer look at the pleadings in the original Circuit Court case and the fact that they did not ask for relief regarding the issues that were brought forward at this public hearing, he would move that the Board uphold the Zoning Administrator. It was seconded by Mr. Hammack and carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 248, November 9, 1995, (Tape 1), Action Item:

Approval of October 31, 1995 Resolutions

Mr. Ribble moved to approve of the October 31, 1995 Resolutions and hearing no objection Chairman DiGiulian so ordered. The motion carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 248, November 9, 1995, (Tape 1), Action Item:

Approval of July 18, 1995 Minutes

Mr. Ribble moved to approve of the July 18, 1995 Minutes and hearing no objection Chairman DiGiulian so ordered. The motion carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 248, November 9, 1995, (Tape 1), Action Item:

Roy Perry Appeal Acceptance Request

William Shoup, Deputy Zoning Administrator, reiterated the statements of the October 30, 1995 memorandum pertaining to the timeliness and completeness of the application.

Mr. Perry, the appellant, presented arguments pertaining to the timeliness and completeness of the application.

Mr. Pammel moved to accept and schedule the Roy Perry Appeal for the morning of January 2, 1996. It was seconded by Mr. Kelley and carried by a vote of 6-0 with Mr. McPherson being absent from the meeting.

Page 248, November 9, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
Paul G. Munch, VC 95-V-116

Mr. Kelley moved to grant the Out of Turn Hearing Request for VC 95-V-116. It was seconded by Mr. Ribble and carried by a vote of 6-0. Mr. McPherson was absent from the meeting. The public hearing was scheduled for December 19, 1995.

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Page 248, November 9, 1995, (Tape 1), Action Item:

Intent to Defer
Potomac Conference Corporation of Seventh Day Adventists, SP 95-M-034

Mr. Hammack moved to grant an Intent to Defer for SP 95-M-034. It was seconded by Mr. Kelley and carried by a vote of 6-0. Mr. McPherson was absent from the meeting. The public hearing was scheduled for January 23, 1996.

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Page 249, November 9, 1995, (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 10:53 a.m.

Minutes by: Regina Thorn

Approved on: December 12, 1995


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 14, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; John Ribble; and Timothy McPherson.

Chairman DiGiulian called the meeting to order at 9:04 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 251, November 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RONNIE BAILEY, VC 95-L-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line and to exceed 30% maximum rear yard coverage. Located at 6801 Lois Dr. on approx. 11,031 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 233.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent, David Printz, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated November 9, 1995 prepared by Lori Greenlief. The applicant was requesting a variance of 6.0 feet to the minimum side yard requirement and to allow the pool, deck, and shed in the rear yard to cover 36% of the minimum rear yard which was a difference of 6%.

David Printz, the applicant's agent, presented the applicant's request as outlined in the statement of justification submitted with the application. Mr. Printz addressed the Board's questions by stating that the issue of the encroachment onto lot 234 has never been raised before; therefore, it has not been resolved.

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

Mr. Hammack moved to grant VC 95-L-104 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 9, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-L-104 by RONNIE BAILEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.0 feet from side lot line and to exceed 30% maximum rear yard coverage, on property located at 6801 Lois Drive, Tax Map Reference 90-4 ((6)) 233, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,031 square feet.
4. The applicant met the nine required standards for variance.
5. The topographical conditions and practical limitations make this an ideal site for the garage.

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6. The variance is a minor request.
7. The variance will not change the character of the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific addition and accessory structures (swimming pool, shed and deck) shown on the plat prepared by RC Fields, Jr. & Associates, dated December 28, 1994, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 21, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DAVID P. HOYER, VC 95-H-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.6 ft. from side lot line such that side yards total 20.7 ft. Located at 9315 Telfer Ct. on approx. 13,094 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((14)) 263.

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

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated November 9, 1995 prepared by Lori Greenlief. The applicant was requesting a variance of 4.4 feet to the minimum side yard requirement and a variance of 3.3 feet to the total minimum side yard requirement.

David Hoyer, 9315 Telfer Court, Vienna, Virginia, presented his variance request as outlined in the statement of justification submitted with the application. He submitted a letter of support from an adjacent neighbor.

Mr. Pammel asked the applicant if he would agree to a reduced size carport that would be 6.0 feet to the side lot line. Mr. Hoyer responded affirmatively.

Mr. Pammel moved to grant in part VC 95-H-105 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 9, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-105 by DAVID P. HOYER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.6 feet from side lot line such that side yards total 20.7 feet **(THE BZA GRANTED THE CONSTRUCTION OF ADDITION 6.0 FEET FROM SIDE LOT LINE SUCH THAT SIDE YARDS TOTAL 23.1 FEET)**, on property located at 9315 Telfer Court, Tax Map Reference 28-4 ((14)) 263, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13,094 square feet.
4. The applicant has met the nine required standards for variance.
5. The lot configuration is narrow.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Peter R. Moran, Certified Land Surveyor, dated May 12, 1972, revised by Gilbert M. Glaubinger, architects, revised on November 17, 1995, submitted with this application and is not transferable to other land. A revised variance plat that incorporates the features of the development conditions set forth below shall be submitted within thirty (30) days of the Board of Zoning Appeal's decision on this variance. The Board of Zoning Appeals' action on this application shall not become final until eight (8) days after the revised variance plat is submitted to and approved by the Board of Zoning Appeals.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 259, November 14, 1995, (Tape 1), DAVID P. HOYER, VC 95-H-105, continued from Page 257

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 259, November 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. ROBERTS, VC 95-D-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line and to allow 4.7 ft. high fence and swimming pool to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 925 Cup Leaf Holly Ct. on approx. 20,038 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 70.

Chairman DiGiulian stated that there was a deferral request for this application. David Hunter, Staff Coordinator, stated that the notices were not in order and suggested deferring the case to January 2, 1996. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 259, November 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND LINDA SCHAKENBACH, VC 95-M-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 0.7 ft. from side lot line. Located at 4129 Downing St. on approx. 27,264 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((3)) 18.

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

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated November 9, 1995. The applicant was requesting a variance of 9.3 feet to the side yard requirement.

John Schakenbach, 4129 Downing Street, Annandale, Virginia, presented his request as outlined in the statement of justification submitted with the application. He submitted a letter of support from the adjacent property owner.

Mr. McPherson asked the applicant if he would agree to a reduced size carport that would be 6.0 feet to the side lot line. Mr. Schakenbach replied negatively.

Mr. McPherson moved to deny VC 95-M-099 for the reasons set forth in the Resolution, subject to Proposed Development Conditions contained in the staff report dated November 9, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-099 by JOHN AND LINDA SCHAKENBACH, under Section 18-401 of the Zoning Ordinance to permit construction of carport 0.7 feet from side lot line, on property located at 4129 Downing Street, Tax Map Reference 61-3 ((3)) 18, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14,

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1995; and

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

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 27,264 square feet.
- 4. The variance is 0.7 feet from the side lot line; therefore, there is no room for proper maintenance.

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

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

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

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

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

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

Mr. Dively made a motion to waive the 12-month waiting period and allow the applicant to refile. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 21, 1995.

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Page 263, November 14, 1995 (Tape 1), Scheduled case of:

9:00 A.M. POTOMAC CUSTOM BUILDERS, VC 95-D-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 15.0 ft. from street line of a corner lot. Located at 1950 Rhode Island Ave. on approx. 15,319 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 17 and 18.

Chairman DiGiulian stated that there was a request from the applicant to defer the case.

Lawrence Lawson, Jr., the applicant's agent, spoke to the deferral stating that Mr. Lewis had removed several trees along Rhode Island Avenue. Last Wednesday, they met with the community in Franklin Park and discovered that they were disturbed by the removal of those trees. Therefore, they were requesting the variance be deferred while they worked out development conditions to address the concerns of the community.

Chairman DiGiulian called for speakers to the deferral.

The following came forward: Jim Meehan, President of Franklin Area Citizen Association; Clarissa Collards, 1930 Rhode Island Avenue. They were opposed to the deferral because they felt the development of the lots had preceded to such an advance stage that their concerns could no longer be resolved.

In rebuttal, Mr. Lawson stated that they had met with the community and were willing to explore some alternatives that may accomplish the concerns they expressed over tree preservation. He stated that he was prepared to go forward with the case if the Board did not want to defer it.

Mr. Dively moved to defer the case to January 2, 1996 because the applicant was agreeable and it would serve the interest of the community. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 263, November 14, 1995 (Tape 1), Scheduled case of:

9:00 A.M. LINDA M. OLIVA, VC 95-H-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from rear lot line. Located at 12825 Monroe Manor Dr. on approx. 14,427 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((14)) 6.

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

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated November 9, 1995 prepared by Lori Greenlief. The applicant was requesting a variance of 4.0 feet to the rear yard requirement.

Mike Oliva, 12825 Monroe Manor Drive, Herndon, Virginia, presented his request as outlined in the statement of justification submitted with the application. He noted that the addition has the approval of the subdivision's Architectural Review Board.

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

Mr. Ribble moved to grant VC 95-H-102 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 9, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-102 by LINDA M. OLIVA, under Section 18-401 of the Zoning Ordinance

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to permit construction of addition 21.0 feet from rear lot line, on property located at 12825 Monroe Manor Drive, Tax Map Reference 25-2 ((14)) 6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 14,427 square feet.
4. The applicant met the nine required standards for variance.
5. The rear yard is exceptionally shallow.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by

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Alexandria Surveys, Inc. dated August 7, 1995, submitted with this application and is not transferable to other land. It is noted that the screens can be replaced with glass, wood, or other material without an amendment to this variance.

- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 21, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 247, November 14, 1995 (Tape 1), Scheduled case of:

9:30 A.M. POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, SP 95-M-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities. Locate at 3206 Glenn Carlyn Rd. on approx. 2.25 ac. of land zoned R-3. Mason District. Tax Map 51-4 ((8)) A; 61-2 ((5)) 3 & 4. (DEF. FROM 9/12 FOR NOTICES. PLANNING COMMISSION WILL HEAR CASE ON 11/2)

Chairman DiGiulian stated that the Board issued an intent to defer last week. Mr. Pammel moved to defer the case to the evening of January 23, 1996. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 247, November 14, 1995 (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A. (DEF. FROM 3/8 AT APP.'S REQ. CHAIRMAN LIMITED TO 5 MINUTES. DEF. FROM 4/12 - APPELLANT MUST BE PRESENT. DEF. FROM 6/7, 10/25, 4/25/95, AND 7/25/95 AT APPELLANT'S REQUEST)

William Shoup, Deputy Zoning Administrator, stated that by memorandum dated November 8, 1995, he was recommending a deferral. He stated that this case has been deferred a number of times to allow the appellant to obtain site plan approval and it appears to be imminent. Therefore, they recommended that this case be deferred until March 26, 1996.

Mr. Kelley made a motion to defer the case to staff's suggested date. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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9:30 A.M. PAUL G. DOUGLAS, Appeal 95-V-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental, and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 6737 Richmond Hwy. on approx. 27,705 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 93-1 ((17)) 1A.

Mr. Hammack stated that he had a letter from the appellant requesting a deferral because his notices were not in order. Mr. Hammack made a motion to defer the case to January 16, 1996. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 269, November 14, 1995 (Tape 1), Scheduled case of:

9:30 A.M. MIKE'S SERVICE CENTER, T/A CEDAR PARK CITGO, Appeal 95-P-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 2530 Cedar Ln. on approx. 36,150 sq. ft. of land zoned C-5. Providence District. Tax Map 49-1 ((1)) 42A.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated November 7, 1995.

The appellant, Sandra Hall, 1331 Jasper Road, Fairfax, Virginia, presented the arguments forming the basis for the appeal. She also submitted a petition in support of the appeal. In response to questions from the Board, Mrs. Hall stated that they were operating under the original special permit use.

Dave Minyard, 605 Truman Circle, Vienna, Virginia, spoke in support of the appellant's position. His main point dealt with the Zoning Ordinance definition of heavy equipment and how he felt it needed to be more specific as to the types of equipment under that category.

The Board discussed with Mr. Shoup the various types of vehicles and how they would be categorized in the Zoning Ordinance under heavy equipment. They also discussed the types of vehicles included under the definition of vehicle sales, rental and ancillary services.

Mr. Shoup responded to questions from the Board by stating that this use is not permitted in the C-5 District under a special exception use nor a special permit use. He stated that the Board of Supervisors asked staff to take a look at the regulations to see if there was good cause to amend the Zoning Ordinance. The assessment was that they were not recommending the Zoning Ordinance be amended to allow this type of use, especially in a C-5 and C-6 District. They felt it was too intense a use for those districts.

Mr. Hammack stated that the Board of Zoning Appeals' responsibility is to rule on the notice of violation and since the Board of Supervisors has set the policy he couldn't find any reason not to uphold the Zoning Administrator's determination.

Mr. Dively stated that he wanted to defer the case for six months so the appellant could try to file an application with the Board of Supervisors to see if this use can be permitted.

Mr. Pammel made a motion that the BZA defines the use, being appealed under Appeal 95-P-054, as a rental activity which is ancillary and secondary to the primary use of this site, that being a service station. However, he suggested that the BZA limit the definition as contained in the Virginia State Department of Motor Vehicles (DMV) regulations concerning heavy equipment which stipulates that no vehicles on the site would exceed a specific weight. Mr. Kelley seconded the motion. Chairman DiGiulian asked the maker if the intent of his motion was to uphold the Zoning Administrator's determination. Mr. Pammel said that was correct. Chairman DiGiulian then called for discussion.

Mr. Hammack stated that he believed there were two issues. One being the DMV regulations and

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Page 271, November 14, 1995 (Tape 1), MIKE'S SERVICE CENTER, T/A CEDAR PARK CITGO, Appeal 95-P-054, continued from Page 269)

definitions and the other being the Zoning Ordinance. He stated he would like the opportunity to further review this case before making a decision.

Mr. Shoup informed the Board that in a court case heard in the early 1970's, the court ruled that these types of uses cannot be considered accessory to a service station use.

In rebuttal, Mrs. Hall stated that the majority of the U-Haul customers are the area residents and that they are supportive of the business.

Mr. Hammack stated that he was opposed to the motion because he felt there wasn't any ambiguity in the Zoning Ordinance the way it's written and he didn't like the result they have come up with. He would prefer a deferral so they could explore some other options.

Mr. Dively stated that he didn't want to rule on the case at this time. He wanted to defer the case and send it to the Board of Supervisors so they could make a policy decision on the situation.

Mr. Pammel stated that he would also agree to a deferral. He felt that this was a vital neighborhood and community service that was being jeopardized by the present Zoning Ordinance Code. He made a motion to defer the case for six months and that the Board of Supervisors be advised of the situation. Mr. Ribble seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian moved to set the case for May 14, 1996. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 271, November 14, 1995 (Tape 1), Scheduled case of:

9:30 A.M. BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a freestanding sign advertising an individual enterprise within a shopping center, in violation of Zoning Ordinance provisions. Located at 6461 Edsall Rd. #305 on approx. 5.25 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7A. (DEF. FROM 5/23 AND 7/6 FOR NOTICES. DEF. FROM 9/26/95 FOR NOTICES)

Mr. Shoup advised the Board the notices were not in order for this case. He indicated that staff had contacted the appellants and recommended they submit a letter explaining why notices were not done. The appellants never submitted a letter nor were they at the hearing. Mr. Shoup suggested that this case be dismissed due to the previous deferrals for notices not in order and the lack of any progress on the case. Mr. Kelley so moved. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 271, November 14, 1995 (Tape 1), Scheduled case of:

Approval of Resolutions
from November 9, 1995 hearing

Chairman DiGiulian moved to approve the resolutions from November 9, 1995 hearing. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 271, November 14, 1995 (Tape 1), Scheduled case of:

Out of Turn Hearing Request for
John Tsiaoushis T/A Shark Club Billiards and Cafe, SP 95-Y-069

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Page 273, November 14, 1995 (Tape 1), JOHN TSIAOUSHIS T/A SHARK CLUB BILLIARDS AND CAFE, SP 95-Y-069, continued from Page 271)

Mr. Pammel moved to deny the out of turn hearing request because it may be a controversial application and staff would need to have time to evaluate it. He also wanted to give the community time to be apprised of the application. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 273, November 14, 1995 (Tape 1), Scheduled case of:

Out of Turn Hearing Request for
John and Kimberly Weiler, VC 95-V-124

Mr. Dively moved to grant the out of turn hearing request and schedule it for January 2, 1996. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:27 a.m.

Minutes by: Teresa M. Wang

Approved on: February 13, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 21, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:01 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Marilyn Anderson, Senior Staff Coordinator, was present in the absence of the Branch Chief, Jane Kelsey.

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Page 275, November 21, 1995 (Tape 1), Scheduled case of:

8:00 P.M. KATHY AND LARRY PATTERSON, APPEAL 95-V-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the appellants are parking a dump truck in a residential district in violation of the Zoning Ordinance provisions. Located at 4021 Colonial Ave. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((2)) 16.

William Shoup, Deputy Zoning Administrator, provided the BZA with a letter from the appellant requesting that the appeal be deferred to a night meeting. Mr. Ribble moved to grant the appellant's request and schedule the appeal on the night of February 20, 1996. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 275, November 21, 1995 (Tape 1), Scheduled case of:

8:00 P.M. K-V ENTERPRISES OF MCLEAN, INC., APPEAL 95-M-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellants' use of property as a storage yard in an R-3 District is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3524 Williams Dr. on approx. 46,901 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 107. (DEF. FROM 4/11 AT APP.'S REQ. DEF. FROM 10/10 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, informed the BZA that the violation had been corrected; therefore, the appellant was requesting a withdrawal of A 95-M-004. He added that it was his understanding that some of the citizens disagreed with the withdrawal and had indicated that they would be present to speak to the request. Chairman DiGiulian polled the audience to determine if anyone was present and there was no response. Mr. Ribble moved to grant the appellant's request. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 275, November 21, 1995 (Tape 1), Scheduled case of:

8:00 P.M. VOYTEN & ASSOCIATES, INC., APPEAL 95-S-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination of the Director of the Office of Comprehensive Planning regarding what constitutes the submission date of a 456 Review application and that the date of appellant's original application letter did not begin the 60-day period by which the Planning Commission must act on the submission as provided in Sect. 15.1-456 of the Virginia Code. Located at 13451 Braddock Rd. on approx. 227.93 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 12.

William Shoup, Deputy Zoning Administrator, informed the BZA that the appellant was requesting a deferral in order to allow the Planning Commission to review the 456 Review application. Mr. Dively moved to schedule the appeal for the night of December 19, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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8:00 P.M. ANJUMANE ISLAHUL MUSLEMEEN OF NORTHERN VIRGINIA, SP 95-S-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 8608 Pohick Rd. on approx. 1.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 22. (MOVED FROM 10/10/95)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Lynne J. Strobel, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented staff's position as outlined in the staff report dated November 14, 1995 and said staff recommended approval of SP 95-S-049 based on the implementation of the Proposed Development Conditions. Staff also recommended approval of a waiver of the barrier requirements, but had included a Proposed Development Condition requiring additional plantings along the eastern, southern, and western lot lines, and along the rear of the parking lot.

Ms. Strobel presented the applicant's request as contained in the statement of justification submitted with the application. She clarified for the record that the building addition shown on the special permit plat does not presently exist but will be constructed at a later time, and noted that all the improvements referenced in the Development Conditions will be constructed prior to occupancy of the site. Ms. Strobel said in response to concerns raised by the community, the applicant has relocated the building addition so that it is adjacent to the existing building, the addition's size has been reduced to 3,600 square feet, and the addition will simply be an extension of the existing building. The applicant was proposing a total seating capacity of 100 with 48 parking spaces, which is above the required 25 spaces. Ms. Strobel said, If the application was approved the existing septic field will be abandoned and the addition will be connected to an existing sanitary sewer easement adjacent to the property. She asked that the sentence, "Upon commencement of construction of the addition. . . ." be deleted from Conditions 10 and 12 and added that the applicant agreed to the remainder of the Conditions. Ms. Strobel asked, in order to limit the number of speakers, that the citizens in the audience who were in support of the application to stand. The citizens did so.

Chairman DiGiulian called for speakers of the application and asked that the speakers address the land issues only.

The following came forward to speak in support of the application: Mohammad Chaudhari, 6802 Ben Franklin Road, Springfield, Virginia; Allan Santora, 3936 Providence Place, Springfield, Virginia; Errazzouki Abdellatif, 8424 Lacy Creek Court, Springfield, Virginia; Kenneth Turay, 110 S. Bragg Street, Alexandria, Virginia; Property Owner, 4254 Buckman Road, Alexandria, Virginia; Sayed A. Tora, 7936 Pebblebrook Court, Springfield, Virginia; and, four unidentified speakers. The speakers spoke to the importance of having a mosque in their neighborhood, the distances they presently travel in order to attend prayer services at other mosques, and added that the prayer times would not adversely impact the community since they are held at various times throughout the day.

The following came forward to speak in opposition to the application: Neal McBride, Vice President Newington Forest Citizens Association; Wade Heath, 7806 Red Tulip Court, Springfield, Virginia, President of Afton Glen Homeowners Association; Lee Lawson, 8618 Groveland Drive, Springfield, Virginia; Bill Sutton, 8615 Groveland Drive, Springfield, Virginia; Taclan Suerdem, Owner of Lot 99; Dave Osborne, 8654 Pohick Forest Court, Springfield, Virginia; Kermit Stiltner, 8650 Pohick Forest Court, Springfield, Virginia; and, Mary Ann Sprouse, 7811 Red Tulip Court, Springfield, Virginia. The speakers expressed concern that the hours of operation might negatively impact the neighborhood, that the additional vehicular traffic is too much for the existing roads, that the number of attendees is grossly underestimated, that further development of the property might aggravate an existing runoff problem, and the noise impact. Mr. Heath asked that the property be reviewed on an annual basis to ensure compliance with the Development Conditions.

In rebuttal, Ms. Strobel said the applicant has agreed to dedicate right-of-way and provide easements for improvements to Pohick Road and the septic field will be eliminated. She noted that the applicant was unaware that services could not be held on site until such time as special permit approval was obtained,

and upon being told of the violation the services ceased.

Mr. Pammel made a motion to approve SP 95-P-049 for the reasons noted in the Resolution subject to the Proposed Development Conditions contained in the staff as amended and reflected in the Resolution. Following a discussion among the BZA members, Mr. Pammel amended Proposed Development Condition 14 to tie the annual review to the issuance of the Non-Residential Use Permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-S-049 by ANJUMANE ISLAHUL MUSLEMEEN OF NORTHERN VIRGINIA, under Section of the Zoning Ordinance to permit a place of worship and related facilities, on property located at 8608 Pohick Road, Tax Map Reference 98-1((1))22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 21, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.90 acres.
4. The lot is a relatively small parcel compared to the size of most religious facilities in the County that range anywhere from perhaps four acres on up. There was discussion with respect to the Catholic church that had acquired over ten acres near this site for its church and just under two acres is very minimal. The same problem with size occurred with the Falls Church mosque which had a relatively small site, built the facility, and completely underestimated the number of people who would be participating. It appears that some of the people attending the Falls Church mosque will now attend the proposed mosque thus relieving that site from some of the attendance and traffic problems there; but, the BZA does have to be concerned about size as it would not want to see a project developed on the subject property that would have three or four times the number of people attending the mosque that was originally intended. That would create an impact. To address that possibility, the BZA should annually review the project and the conditions to ensure that all of the conditions as set forth in the Resolution are being met. The only way the BZA can be assured that the conditions are being met is to have staff do inspections and submit a report to the BZA. The staff has found in their analysis that the application does meet all the standards as prescribed by the Zoning Ordinance.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Kephart & Company dated October 6, 1995, received by the Office of Comprehensive Planning on November 3, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use. Worship services cannot be held on the subject property prior to the issuance of the Non-Residential Use Permit.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of people on site at any one time shall be 100.
6. Forty-eight (48) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.
7. Existing vegetation north of the existing septic field shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1 along the northern and rear portion of the eastern lot lines.

Barrier H, consisting of one row of trees and averaging no more than 50 feet on center, shall be planted along the eastern and western lot lines between the front lot line and the rear of the proposed parking lot.

Evergreen trees shall be planted between the front parking lot and the front lot line to provide supplemental screening in conjunction with the existing deciduous trees. This vegetation will serve to screen the parking lot and enhance the residential character of the property and shall satisfy the transitional screening requirement along the southern lot line.

A row of evergreen trees shall be planted between the rear of the parking lot and the existing septic field to provide additional screening of the parking lot from the residential lots to the north and northeast of the subject property. If a stormwater management pond is required pursuant to Development Condition #9, a row of evergreen trees shall be planted around the pond and shall satisfy the transitional screening requirement along the northern and eastern lot lines.

Parking lot landscaping shall be provided as required by Article 13 of the Zoning Ordinance.

All trees shall be a minimum of six (6) feet in height at the time of planting, and the species and number shall be as determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review.

8. The barrier requirement shall be waived along all required lot lines.
9. Stormwater Management/Best Management Practices (SWM/BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Environmental Management (DEM). If a waiver of the SWM/BMP requirement is not approved and a structural SWM/BMP is required, the structure shall be located in the area of the abandoned drain field and no additional vegetation shall be cleared.
10. The applicant shall close the existing driveway and obtain access through the adjacent property, Children's World, Inc. The applicant shall be responsible for all construction of the aforementioned access.

- 11. At the time of site plan approval or upon request, whichever occurs first, the applicant shall dedicate to the Board of Supervisors in fee simple and provide easements in accordance with VDOT project 0641-029-282, C 501 for road improvements to Pohick Road.
- 12. The applicant shall abandon the existing drain field and connect to public sewer.
- 13. A sign permit shall be obtained for any sign proposed for this site.
- 14. If parking lot lighting is proposed, it shall be of the low bollard-type lighting, no greater than four (4) feet in height.
- 15. The Board of Zoning Appeals will review the activity on the site, the operation of the mosque, and the compliance with all development conditions one year from the establishment of the use based on the issuance of the Non-Residential Use Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished. Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 1995. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 9:05 p.m. and reconvened at 9:17 p.m.

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Page 279, November 21, 1995 (Tape 1), Action Item:

Approval of the November 14, 1995 Resolutions
with the exclusion of VC 95-H-105, David P. Hoyer

Mr. McPherson made a motion to approve the Resolutions as submitted by staff with the exclusion of VC 95-H-105. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 279, November 21, 1995 (Tape 1), Action Item:

Approval of September 19, 1995 and October 17, 1995 Minutes

Mr. McPherson made a motion to approve the Minutes as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 280, November 21, 1995 (Tape 1), Action Item:

Request for Waiver of 12-Month Time Limitation for Filing an application
for SP 95-V-037 Wat Tummaprateip VADC Foundation, Inc.

Mr. Dively made a motion to grant the applicant's request. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 280, November 21, 1995 (Tape 1), Action Item:

Intent to Defer for Heritage Citgo, Appeal 95-B-045

Chairman DiGiulian said the appellant was asking that the appeal be deferred to May 14, 1996 and it was his understanding that staff had no objections. Mr. Kelley made a motion to grant the appellant's request. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The hearing is currently scheduled for November 28, 1995.

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Page 280, November 21, 1995 (Tape 1), Action Item:

Out of Turn Hearing Request for
John and Joan White, Jr., VC 95-B-117

In response to questions from the BZA, Marilyn Anderson, Senior Staff Coordinator, said staff was currently advertising for January 2, 1996, and noted that the draft staff reports for that date were due next week. Mr. Dively moved to deny the request. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The application is scheduled for January 16, 1996.

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Page 280, November 21, 1995 (Tape 1), Action Item:

Out of Turn Hearing Request for SP 95-L-072, Kingstowne E & F L.P.

Chairman DiGiulian said it appeared that the applicant was granted a building permit and the permit was rescinded. Mr. Kelley made a motion to grant the applicant's request and schedule the public hearing for January 2, 1996. Marilyn Anderson, Senior Staff Coordinator, advised the BZA that staff had just received the application today and the staff reports for the January 2, 1996 hearing were due next week. Mr. Dively suggested January 9th or 16th. Chairman DiGiulian said he did not believe that staff would have to do a tremendous amount of work to prepare a staff report since the use would be located in an existing shopping center.

The applicant, Scott Miller, came forward and said the construction was ongoing and as of this date they have gone through plumbing and electrical inspections. He said final construction would be completed by December 10th or 15th and they hoped to open before Christmas.

Mr. Pammel asked how the issue came about. Chairman DiGiulian said it was his understanding that the applicant obtained a building permit and then was notified by the County that the permit was going to be revoked because they needed a special permit. He added that the applicant proceeded based on assurances from the landlord.

Mr. McPherson said the letter indicated that on September 18, 1995 when the applicant tried to obtain a building permit, they were told that a special permit was needed. Mr. Miller said it had been their belief that the special permit was only needed to allow them to occupy the premises, not for the construction.

Mr. Dively said he believed that there may have been some "good faith" confusion, but that he believed January 2nd might be a little onerous. He then made a motion to grant an out of turn hearing for January.

9th or 16th. Ms. Anderson suggested January 16th, and said staff may not have sufficient time to prepare a staff report. Mr. Kelley said if the BZA was not going to get a staff report for January 16th, why not move the public hearing to January 2nd. Mr. Pammel suggested January 16th based on the assumption that staff would prepare a staff report since they always do.

Mr. Kelley said staff would give them something on January 2nd. Chairman DiGiulian agreed. Ms. Anderson pointed out that the applicant was made aware of the fact that a special permit was needed in September and they did not file the application until November.


Mr. Ribble seconded the motion to grant an out of turn hearing for January 2, 1996 which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The public hearing was originally scheduled for February 20, 1996.


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As there was no other business to come before the Board, the meeting was adjourned at 9:25 p.m.

Minutes by: Betsy S. Hurtt

Approved on: January 2, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 28, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Timothy McPherson; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 283, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN E. L. MIZZELL, SP 95-L-060 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.9 ft. from side lot line, accessory storage structure to remain 5.2 ft. from side lot line and 6.9 ft. from rear lot line and other accessory storage structure to remain 4.5 ft. from side lot line. Located at 6812 Ridgeway Dr. on approx. 21,780 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((7)) 40.

Chairman DiGiulian asked if the applicant was ready to be heard. Susan Langdon, Staff Coordinator, advised that the applicant was not yet present; however, Ms. Langdon said she had spoken with the applicant the previous day and the applicant indicated that she would be present even though she was sick.

Mr. McPherson moved to hear the application at the end of the agenda. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 283, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NOVA BILLIARDS AND CAFE, INC., SP 95-Y-061 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 13975 Metrotech Dr. on approx. 4.90 ac. of land zoned C-8, HC, AN and WS. Sully District. Tax Map 34-4 ((1)) 16B.

Chairman DiGiulian advised that he had a note on his agenda stating that the notices were not in order. Susan Langdon, Staff Coordinator, advised that staff was not aware that the notices were not in order.

Kevin T. Washington, 4050 Summer Hollow Court, Chantilly, Virginia, came forward and stated that he was the applicant and conferred with Jane C. Kelsey, Chief, Special Permit and Variance Branch. Ms. Kelsey advised the Board that the notices were not in order and apologized that the Board had not been notified in advance. The applicant told her that he had done the notices but had not turned them in to the Clerk for verification.

Ms. Kelsey said it would be necessary to defer the application until the notices could be redone.

Mr. Hammack asked if they could check the notices at that time. The applicant said he did not have the notices with him. Mr. Dively asked, if the notices were found to be correct, would a deferral to the next meeting be appropriate.

Mr. Dively moved to defer to the next meeting at 9:30 a.m. if the notices were found to be correct. In answer to a question from Ms. Kelsey, the applicant said he did send the notices via Certified Mail. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Ms. Kelsey emphasized that it would be necessary for the applicant to present his notices to the Clerk for verification and, if any thing was not correct, the hearing would have to be rescheduled and readvertised.

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Page 284, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HERITAGE CITGO, APPEAL 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx. 10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1.

William E. Shoup, Deputy Zoning Administrator, advised that the notices were not in order and also that the Board had issued an Intent-to-defer this case to May 14, 1996 the previous week.

Mr. Shoup advised that a new notification package would be provided to the appellant for the new hearing date.

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

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Page 284, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HAROLD DAWSON/DAWSON'S AUTO CARE, Appeal 95-M-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the provisions. Located at 5930 Leesburg Pi. on approx. 34,970 sq. ft. of land zoned C-5, R-3, HC and SC. Mason District. Tax Map 61-2 ((1)) 23.

William E. Baskin, Esquire, came forward to speak for the appellant.

Mr. Dively asked if this appeal was different from the other U-Haul appeals that the Board had encountered. William E. Shoup, Deputy Zoning Administrator, said this appeal was similar to a couple of the other cases because it dealt with a service station use in conjunction with a U-Haul rental operation. He said it was quite similar to the Cedar Park Citgo that previously was deferred.

Chairman DiGiulian asked if there was anyone present who was interested in the case and received no response. He explained that the Board had deferred several similar U-Haul cases to May 14, 1996 to allow the Board of Supervisors sufficient time to consider the issues and decide if a modification of the Ordinance was in order. Mr. Baskin said he understood that at least one other case had been deferred for the reasons stated. He said it occurred to him that it might be helpful to all concerned to have a determination from the Board of Zoning Appeals (BZA) as to whether this activity really falls into the category of heavy equipment and specialized vehicle sales rental and service and he was prepared that day to address that issue for a determination. Mr. Dively said that was a determination the Board did not wish to make and he was not sure the appellant would like the outcome of that decision. He said that, if the Board ruled to uphold the Zoning Administrator, enforcement actions would be required. Mr. Baskin did not urge the Board to rule contrary to his interest but wished, if they did find in favor of the Zoning Administrator, to have them defer the case as he said they had done in the previous case which they had heard and deferred.

Chairman DiGiulian asked Mr. Baskin if there was anything about this appeal which was different than the one the Board had deferred. Mr. Baskin said that the length of time the operation has existed was different but the definition of the equipment would still be an issue.

Mr. McPherson moved to defer the appeal to the morning of May 14, 1996. Mr. Pammel seconded the motion.

Mr. Hammack related the problems with the issue of the Board attempting to address the definition of the equipment. He said that it would be in the best interest of the appellants to allow them the opportunity to work with the Zoning Administrator in revisiting the issue of what may be an exception under the Ordinance or whether the Ordinance was consistent with the State Code, to avoid making a ruling which would require enforcement. He said that the Board ultimately might have to do that. Mr. Hammack further stated he believed it was the opinion of the Board that U-Hauls should be permitted at least in some

situations in the C-5 District, but the Zoning Administrator had taken a position that they should not be permitted under the Ordinance. He said the Board reviewed some of the possible ambiguities in defining what was and what was not heavy equipment a couple of weeks ago and he tended to agree with Mr. McPherson that it would be more advantageous to the appellant to defer the decision and allow for a possible legislative resolution.

Mr. Baskin was agreeable to a deferral. The motion passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 285, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN E. L. MIZZELL, SP 95-L-060 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.9 ft. from side lot line, accessory storage structure to remain 5.2 ft. from side lot line and 6.9 ft. from rear lot line and other accessory storage structure to remain 4.5 ft. from side lot line. Located at 6812 Ridgeway Dr. on approx. 21,780 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((7)) 40.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Ms. Mizzell complied.

Susan Langdon, Staff Coordinator, presented the staff report, outlining staff's position.

Ms. Mizzell presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record. She explained that they had created the building in error because they did not know that they had to get a permit to put an addition on the back of their garage.

Chairman DiGiulian asked if the garage and two sheds which were there previous to the applicant's addition had been covered under a variance and she said they were.

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

Mr. Hammack moved to grant SP 95-L-060 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 21, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-060 by SUSAN E.L. MIZZELL, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit an accessory structure to remain 4.9 feet from side lot line, an accessory storage structure to remain 5.2 feet from side lot line and 6.9 feet from rear lot line and other accessory storage structure to remain 4.5 feet from side lot line, on property located at 6812 Ridgeway Drive, Tax Map Reference 90-1((7)40, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 1995; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is approved for the location and specified accessory structure and accessory storage structures shown on the plat submitted with this application and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Cook and Miller, Ltd., dated September 30, 1994, revised through December 8, 1994, submitted with this application.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 287, November 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NOVA BILLIARDS AND CAFE, INC., SP 95-Y-061 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 13975 Metrotech Dr. on approx. 4.90 ac. of land zoned C-8, HC, AN and WS. Sully District. Tax Map 34-4 ((1)) 16B.

Ms. Kelsey advised that, after further discussion with the applicant, it had been determined that he had not sent out the required legal notices at all. She said the applicant had agreed to a deferral to January 9, 1996.

Mr. Dively moved to rescind the previous motion and moved to defer the hearing to January 9, 1996 at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 287, November 28, 1995, (Tape 1), Action Item:

Anjumane Islahul Muslemeen of Northern Virginia, SP 95-S-049

Mr. Dively moved to reconsider in order to modify the Resolution. Mr. Dively seconded the motion which carried by a vote of 5-1. Mr. Hammack abstained because he was not present for the original hearing. Mr. Kelley was not present for the meeting.

A new Condition 15 was added, pertaining to the lighting.

The Board moved to accept the Resolution as modified.

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Page 287, November 28, 1995, (Tape 1), Action Item:

Approval of Resolutions from November 21, 1995

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

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Page 287, November 28, 1995, (Tape 1), Action Item:

Acceptance Request
Penderbrook Community Association Appeal

William E. Shoup, Deputy Zoning Administrator, referred the Board to his memo requesting that the appeal not be accepted because it was not timely filed within the thirty day period and, further, because it was not filed with the Clerk to the Board of Zoning Appeals (BZA) as required by the State Code and the Zoning Ordinance. He said that, since his memorandum was distributed, staff had received a copy of a courier receipt from Patrick Via, the attorney for the appellant, which showed that, instead of the September 14, 1995, date that staff believed was the date the appeal was submitted, it actually was received in his office at 4:00 p.m. on September 13; therefore, there no longer was a timeliness issue. Mr. Shoup said that the only outstanding issue was the fact that the appeal had not been filed with the Clerk to the BZA.

Mr. Pammel said the Board had encountered this problem before and he was inclined to approve the acceptance based upon the fact that not everyone was familiar with all the requirements of who to file with. He believed the appellant met the spirit and intent of the law by filing the appeal in a timely fashion and, even though it was not directed to the Clerk of the BZA, he moved to accept the appeal. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mr. Shoup advised the Board that the appellant had requested that the appeal not be scheduled for public hearing yet because they were working on an alternative way to solve the issue. He proposed withholding the scheduling indefinitely and Chairman DiGiulian said he concurred.

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Page 288, November 28, 1995, (Tape 1), Action Item:

Discussion of Out-of-turn Hearing SP 95-L-072
Kingstowne E & F, L.P.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said it was her understanding that the Board had granted an out-of-turn hearing the previous week for this application, scheduling it for January 2, 1996. She said that, after reviewing the application, staff believed that a staff report should be written and provided to the Board and the citizens because this represented the first application for a special permit in the Kingstowne area. For that reason, Ms. Kelsey said she believed it was important that the Board have benefit of a staff report. She said staff could provide a staff report to the Board on January 2, the day of the hearing or, if the Board would prefer to have it a week in advance, the Board could move the hearing to the following week. Chairman DiGiulian said the application was relatively simple and he was willing to receive the staff report the day of the hearing. The Board concurred.

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Page 288, November 28, 1995, (Tape 1), Action Item:

Approval of Revised Plats and Resolution for
David P. Hoyer, VC 95-H-105

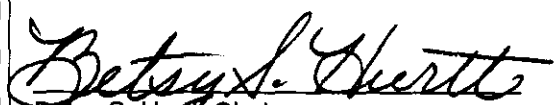
The Board of Zoning Appeals (BZA) was in receipt of a memo from staff transmitting a revised plat and recommending approval of the plat and the Resolution to grant. Mr. Ribble moved to approve. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 9:35 p.m.

Minutes by: Geri B. Bepko

Approved on: March 26, 1996


Betsy S. Hurff, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 5, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 289, December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. BRENDAN P. & CHRISTINA A. KENNEDY, VC 95-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from front lot line. Located at 7409 Windy Hill Ct. on approx. 16,547 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 30-1 ((26)) 5.(DEF. FROM 9/26/95 AT APPLICANT'S REQUEST)

Mr. McPherson moved that VC 95-D-078 be deferred until January 30, 1996 due to the notices not being in order. It was seconded by Mr. Hammack and carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were not present for the vote.

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Page 289, December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. KEITH W. & PHYLLIS P. SHERPER, VC 95-M-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction addition 2.0 ft. from side lot line. Located at 3252 Juniper Ln. on approx. 30,519 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((3)) 39A.

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

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The applicant requested a variance of 5.0 feet from the minimum side yard requirement to permit a carport.

Ms. Rosati presented the applicant's request as outlined in the statement of justification submitted with the application. She noted the six letters of support that were submitted to the Board.

After discussion between the Board members and Ms. Rosati concerning whether or not the width of the carport could be reduced, Mr. Hammack moved to defer the public hearing to December 12, 1995. It was seconded by Mr. Dively and carried by a vote of 7-0.

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Page 289, December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. ALLAN R. FAGAN, SP 95-P-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 12.0 ft. from rear lot line. Located at 2532 Herrell Ct. on approx. 1,416 sq. ft. of land zoned R-5. Providence District. Tax Map 49-2 ((24)) 14A.

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

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Page 29, December 5, 1995, (Tape 1), ALLAN R. FAGAN, SP 95-P-063, continued from Page 289)

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The minimum rear yard requirement is 20.0 feet, therefore, the amount of the error is 8.0 feet. On June 1, 1995 the applicant was issued a Notice of Violation which indicated that the structure was constructed too close to the rear lot line without the benefit of a building permit.

The applicant's agent, Mr. Rau, presented the applicant's request as outlined in the statement of justification submitted with the application.

The following spoke in opposition. Leopold Collin, President of the homeowners association, 2533 Herrell Court, Elaine Sullivan, 2537 Herrell Court, Frances James, 2530 Herrell Court, and Peter Thraves, 2531 Herrell Court. Their reasons were that the applicant did not receive approval from the homeowners association to build the structure. The speakers felt that the structure was an eyesore, was not in harmony with the neighborhood, and would depreciate their property values.

The BZA asked the speakers if there was documentation pertaining to the process of obtaining approval from the homeowners association to build additions. The BZA members found that documentation does exist and homeowners are required to obtain approval from the homeowners association prior to building any additions on the property.

Mr. Rau addressed the speakers concerns in his rebuttal.

The BZA questioned Mr. Rau and found that the applicant had never attempted to obtain a building permit.

In response to a question from the Board, staff said that the rear yard coverage was less than 30%.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said that the issue relative to the architectural design was strictly a matter between the homeowners association and the applicant and was not a matter over which the Board would have jurisdiction. However, if the applicant had obtained the appropriate County permits he would have been notified that he needed a variance. Mr. Pammel moved to deny SP 95-P-063 based on the facts presented to the Board and for the reasons set forth in the Resolution.

Mr. Dively said the structure was not harmonious with the neighborhood and he didn't see how it ever could be and for that reason he supported the motion.

Mr. Rau asked if the motion constituted a factual finding that the construction was not done in good faith. Chairman DiGiulian replied the fact that the applicant did not try to obtain a building permit for almost three years indicated that he did not act in good faith. Mr. Rau asked was the Board interpreting the failure to obtain a building permit as a failure to act in good faith. Chairman DiGiulian said that was his feeling, but that did not reflect the Board's feeling.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-P-063 by ALLAN R. FAGAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 12.0 feet from rear lot, on property located at 2532 Herrell Court, Tax Map Reference 49-2((24))14A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

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Page 293, December 5, 1995, (Tape 1), ALLAN R. FAGAN, SP 95-P-063, continued from Page 291

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 1,416 square feet.

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995.

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Page 293 December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. CRAIG & ISOBEL C. CALHOUN, VC 95-V-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.0 ft. and 3.7 ft. from street line of a corner lot and 9.5 ft. from rear lot line. Located at 1214 H Street on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 1 and 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Calhoun, 1214 H. Street, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The applicant requested a variance of 26.3 feet to the minimum front yard requirement, 2.5 feet to the minimum rear yard requirement, and 18.0 feet to the minimum front yard requirement. A new set of elevations was submitted which differed from what was contained in the staff report.

Mr. Calhoun presented the variance request as outlined in the statement of justification submitted with the application.

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

Mr. Ribble moved to grant VC 95-V-109 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-109 by CRAIG AND ISOBEL C. CALHOUN, under Section 18-401 of the Zoning Ordinance to permit construction of additions 12.0 feet and 3.7 feet from street line of a corner lot and 9.5 feet from rear lot line, on property located at 1214 H Street, Tax Map Reference 83-4((2))(39)1 and 2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 7,000 square feet.
4. The applicant met the nine required standards for a variance.
5. There is an extraordinary situation of undeveloped streets.
6. The building lot is narrow.

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

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

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

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

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

1. This variance is approved for the location of the specific additions shown on the plat prepared by RC Fields, Jr. & Associates, dated September 16, 1994, and revised through May 3, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 297, December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. ROBERT M. & MELANIE A. SAMSON, SP 95-B-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 ft. from rear lot line and 18.6 ft. from side lot line. Located at 8600 Chapel Dr. on approx. 21,852 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 187. (Concurrent with VC 95-B-110).

9:00 A.M. ROBERT M. & MELANIE A. SAMSON, VC 95-B-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 17.9 ft. from side lot line. Located at 8600 Chapel Dr. on approx. 21,852 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 187. (Concurrent with SP 95-B-064).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Samson, 8600 Chapel Drive, Annandale, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The applicant's special permit request was for a reduction to the minimum yard requirements based on an error in building location. The amount of the error was 8.1 feet or 70%. The applicant also requested a variance of 2.1 feet from the side lot line.

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Mr. Samson presented the requests as outlined in the statement of justification submitted with the application.

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

Mr. McPherson moved to grant SP 95-B-164 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-B-064 by ROBERT M. AND MELANIE A. SAMSON, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 feet from rear lot line and 18.6 feet from side lot line, on property located at 8600 Chapel Drive, Tax Map Reference 70-1((2))187, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning

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Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified addition shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat entitled, Plat Showing Improvements on Lot 187, Lot 4, Section 3, Wakefield Forest, prepared by Alexandria Surveys, Inc., dated June 28, 1995, submitted with this application.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. McPherson moved to grant VC 95-B-110 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-110 by ROBERT M. AND MELANIE A. SAMSON, under Section 18-401 of the Zoning Ordinance to permit construction of second story addition 17.9 feet from side lot line, on property located at 8600 Chapel Drive, Tax Map Reference 70-1((2))187, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.

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3. The area of the lot is 21,852 square feet.
4. The applicant met the required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 28, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 305, December 5, 1995, (Tape 1), Scheduled case of :

9:00 A.M. MR. & MRS. R. C. FAY, VC 95-M-107 VC Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.7 ft. from rear lot line and to cover more than 30% of the minimum required rear yard. Located at 6108 Fort Hunt Rd. on approx. 13,790 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (7) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard and Bonnie Fay, 6108 Fort Hunt Road, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The applicant requested a variance of 8.3 feet to the minimum rear yard requirement. An elevation, in addition to the plat, and a letter was submitted to the Board.

Mrs. Fay presented the variance request as outlined in the statement of justification submitted with the application. She said the neighbors had no objection to the request.

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

Mr. Kelley moved to grant VC 95-M-107 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-107 by MR. AND MRS. R.C. FAY, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.7 feet from rear lot line and to cover more than 30% of the minimum required rear yard, on property located at 6108 Fort Hunt Road, Tax Map Reference 83-4((3))(7)7, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 13,790 square feet.
4. The applicants met the required standards for a variance.

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5. The subject property has exceptional topographical conditions

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific accessory structures shown on the plat prepared by Alexandria Surveys, Inc., dated June 27, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of

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time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RICK AND GAYLA REED, VC 95-V-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.7 ft. from one side lot line, 19.6 ft. from front lot line and 8.7 ft. from other side lot line. Located at 6027 Edgewood Terrace on approx. 7,354 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (4) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Hetzel, Architect, 9389 Forestwood Lane, Manassas, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The existing dwelling was constructed in 1936 prior to the adoption of the Zoning Ordinance so that the existing one story portion was not required to meet the current Zoning Ordinance requirements. The applicant requested a variance of 2.3 feet to the minimum of one side yard requirement, 1.3 feet to the minimum of the other side yard requirement and 10.4 feet to minimum front yard requirement.

The applicant's architect, Mr. Hetzel, presented the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-V-113 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-113 by RICK AND GAYLA REED, under Section 18-401 of the Zoning Ordinance to permit construction of additions 7.7 feet from one side lot line, 19.6 feet from front lot line and 8.7 feet from other side lot line, on property located at 6027 Edgewood Terrace, Tax Map Reference 83-3((14))(4)7, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

WHEREAS, the Board has made the following findings of fact:

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1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,354 square feet.
4. The variance requests were reasonably marginal.
5. The variance request does not encroach anymore than the house already does.
6. The lot is narrow.
7. There are exceptional topographical conditions.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions shown on the plat prepared by Alexandria Surveys, Inc., dated February 24, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

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Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 3/3, December 5, 1995, (Tape 1), Scheduled case of :

9:30 A.M. DOROTHY & ROBERT KUGEL, VC 95-D-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. from rear lot line and 6.1 ft. from floodplain line. Located at 6016 Claiborne Dr. on approx. 15,707 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-2 ((13)) 4B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Kugel, 6106 Claiborne Drive, McLean, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. The applicant requested a variance 11.7 feet to the rear yard requirement and a variance of 8.9 feet was requested for the floodplain setback requirement.

Mr. Kugel presented the variance request as outlined in the statement of justification submitted with the application. He said the neighbors were in support of the application. There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-D-112 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-112 by DOROTHY AND ROBERT KUGEL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.3 feet from rear lot line and 6.1 feet from floodplain line, on property located at 6016 Claiborne Drive, Tax Map Reference 31-2((13))4B, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

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WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,707 square feet.
4. The applicant presented testimony indicating compliance with the requirements for a variance.
5. The lot has a shallow depth.
6. The location of the residence to the rear of the property leaves little land available to locate a structure within the confines of the required dimensions as set forth in the Zoning Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition listed as "Proposed Screen Porch" shown on the plat prepared by Kenneth White, dated August 16, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 317, December 5, 1995, (Tape 1), Scheduled case of :

9:30 A.M. CHANTILLY BIBLE CHURCH, SPA 85-C-023-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-023 for church and related facilities to permit change in development conditions. Located at 2739 West Ox Rd. on approx. 4.60 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 30. **(SUGGEST DEFERRAL DATE OF 3/26/96)**

Mr. Ribble moved to defer SPA 85-C-023-2 to March 26, 1996. It was seconded by Mr. McPherson and carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 317, December 5, 1995, (Tape 1), Scheduled case of :

9:30 A.M. MUSTAFA CENTER, SP 95-M-036 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 6844 Braddock Rd. on approx. 40,187 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 28. **(MOVED FROM 9/12 AND 11/9 AT APPL.'S REQ.)**

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald Smith, agent for the applicant, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995. He said that in response to concerns from staff, the applicant revised the application and decreased the intensity of the use, the number of seats, and the parking. Access to the site is via an ingress/egress easement through the Bradlick Shopping Center. A letter from the Hillbrook Forest/Tall Oaks Homeowners Association was submitted consenting to the proposal with the suggested conditions.

The applicant's agent, Donald Smith, presented the applicant's request as outlined in the statement of justification submitted with the application. He submitted photographs of the subject property.

Barbara Scarborough, 6909 Pacific Lane, President, Hillbrook/Tall Oaks Civic Association, and Bill Denfeld, adjacent property owner, spoke in opposition. The speakers' concerns pertained to traffic and parking issues.

Mr. Smith gave a rebuttal addressing the speakers' concerns.

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Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant S 95-M-036 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions, as amended, which were contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-036 by MUSTAFA CENTER, under Section 3-203 of the Zoning Ordinance to permit a place of worship and related facilities, on property located at 6844 Braddock Road, Tax Map Reference 71-4((1))28, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 40,187 square feet.
4. This is a small lot and it would accommodate a small use, and I think that this is an institutional use, sort of a transitional use in a sense, between an established residential neighborhood and an existing shopping center. It is an appropriate use for the site, provided it is contained on the site. My concern, as we've had with many other places of worship, is that they tend to grow rapidly and this simply has to be recognized and will have to remain a small use, and if it does, it should be compatible with the neighborhood and the community. In granting, it is appropriate, but, because of the limitations of the site, it would have to remain with certain constraints.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Site Design Engineering, dated April, 1995, revised through November 17, 1995 (date stamped received by OCP) and approved with this application, as qualified by these development conditions.

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3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of worshipers in the main area of worship shall be 100.
6. The hours of operation shall be limited to 12:00 p.m. to 3:00 p.m. on Fridays.
7. Forty-nine (49) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.
8. The existing vegetation may be used to satisfy Transitional Screening 1 along the eastern property line provided it is supplemented to be the equivalent of Transitional Screening 1, and shall be provided along the eastern property line. A six foot board-on-board fence shall be provided inside the transitional screening yard along the entire eastern boundary of the site. This may be accomplished by constructing a serpentine fence inside the transitional screening yard. Transitional Screening 1 shall be provided along the southern property line, along the Braddock Road frontage of the site.

The barrier requirement shall be waived along the southern property line.

9. Landscaping and building foundation plantings shall be provided along the southern and western side of the proposed building in order to enhance the visual appearance of the building. The landscaping and the foundation plantings shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval.
10. Interior and peripheral parking lot landscaping shall be provided as required by the Director, Department of Environmental Management (DEM).
11. The limits of clearing and grading shall be as shown on the special permit plat.
12. Best Management Practices shall be provided to the satisfaction of the Director, Department of Environmental Management (DEM). If a larger stormwater management facility than the proposed underground stormwater management facility shown on the plat is needed, there shall be no infringement into the required transitional screening yards to accommodate such enlarged facility.
13. Access to the site shall be via the ingress-egress easement as shown on the special permit plat from Bradlick Shopping Center. If access to the site cannot be via the ingress-egress easement shown on the special permit plat, this special permit shall be null and void.
14. The parking lot shall be not be illuminated.
15. The maximum Floor Area Ratio for the proposed structure shall be 0.10. The maximum building height for the one story structure shall not exceed 20 feet. The structure shall be architecturally compatible with the existing single family dwellings to the west and shall resemble the architectural elevation submitted with the special permit application attached herein.
16. There shall be no pole-mounted signs associated with this use. Building mounted and free standing signs shall be permitted in accordance with Article 12, Signs.

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Page 323, December 5, 1995, (Tape 1), MUSTAFA CENTER, SP 95-M-036, continued from Page 321)

7. The Board of Zoning Appeals will review the activity on the site and the compliance with all development conditions one year from the issuance of the Non-Residential Use Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 323, December 5, 1995, (Tape 1), Scheduled case of :

9:30 A.M. DANIEL T. HORSEMAN, APPEAL 95-S-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining outdoor storage in excess of 100 sq. ft. in area, that such storage is deemed to be a storage yard and a junk yard, and is parking two dump trucks on the subject property in violation of Zoning Ordinance provisions. Located at 12612 Harper Dr. on approx. 23,069 sq. ft. of land zoned R-C. Springfield District. Tax Map 66-4 ((4)) 40. **(SUGGEST DEFERRAL DATE OF 1/30/96)**

Mr. McPherson moved to defer A 95-S-055 to January 30, 1996. It was seconded by Mr. Ribble and carried by a vote of 7-0.

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Page 323, December 5, 1995, (Tape 1), Scheduled case of :

9:30 A.M. DARRYL A. GRAY/PGW, INC. SALES & SERVICE, APPEAL 95-Y-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of Zoning Ordinance provisions. Located at 14511-N Lee Jackson Memorial Hwy. on approx. 4.95 ac. of land zoned C-8, AN, HC and WS. Sully District. Tax Map 34-3 ((1)) 5.

William Shoup, Deputy Zoning Administrator, said that this was a U-Haul Appeal and informed the Board of the memo from the Zoning Administrator pertaining to the December 4, 1995 action by the Board of Supervisors authorizing consideration of a proposed Zoning Ordinance amendment to allow truck and trailer rental by Special Exception in the C-5 through C-8 districts. Mr. Shoup said the Board of Supervisors referred this issue to the development review subcommittee for further review and also to establish prioritization for scheduling hearings on such an amendment. He said three appeals had already been deferred to May 14, 1996 and that he was not certain when the amendment consideration would be completed or if it would resolve all the appeal uses.

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Page 325, December 5, 1995, (Tape 1), DARRYL A. GRAY/PGW, INC. SALES & SERVICE, APPEAL 95-Y-050, continued from Page 323)

Mr. Ribble moved to defer A 95-Y-050 to the morning of May 14, 1996. The motion was seconded by Mr. Dively and carried by a vote of 7-0.

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Page 325, December 5, 1995, (Tape 1), Action Item:

Approval of November 28, 1995 Resolutions

Mr. Pammel moved to approve the November 28, 1995 Resolutions. The motion was seconded by Mr. McPherson and carried by a vote of 7-0.

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Page 325, December 5, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request
William Otis VC 95-V-131


Mr. Pammel moved to deny the Out of Turn Hearing Request for VC 95-V-109. The motion was seconded by Mr. Ribble and carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Minutes by: Regina Thorn

Approved on: February 6, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 12, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 327, December 12, 1995 (Tape 1), Scheduled case of:

9:00 A.M. KENNETH JAHELKA, VC 95-P-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 36.7 ft. from front lot line. Located at 2845 Cedarest Rd. on approx. 38,206 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((1)) 1. (MOVED FROM 12/5 AT APPL.'S REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth L. Jahelka, 2845 Cedarest Road, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated December 5, 1995 prepared by Lori Greenlief. The applicant requested a variance of 3.3 feet to the minimum front yard requirement.

Mr. Jahelka presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 95-P-108 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-108 by KENNETH JAHELKA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 36.7 feet from front lot line, on property located at 2845 Cedarest Road, Tax Map Reference 49-3 ((1)) 1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 and HC.
3. The area of the lot is 38,206 square feet.
4. The applicant met the nine required standards for variance.
5. The placement of the porch is at the front of the lot.
6. The variance is a minor request.
7. The variance request will not change the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Payne Associates, dated July 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 329, December 12, 1995, (Tape 1), Scheduled case of:

9:00 A.M. OBDULIA AURORA LADISA, VC 95-Y-080 Appl. under Sect(s).18-401 of the Zoning Ordinance to permit six foot high fence to remain in the front yard of a corner lot. Located at 5522 Willow Valley Rd. on approx. 15,902 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-3 ((6)) 1. (MOVED FROM 9/26 AND 12/5/95 AT APP.'S REQ.)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant had failed to fulfill the notice requirement for the application and requested a deferral.

Mr. McPherson moved to defer VC 95-Y-080 to the morning of January 30, 1996. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 329, December 12, 1995, (Tape 1), Scheduled case of:

9:00 A.M. KAREN L. REID, VC 95-H-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 3 having lot width of 67.48 ft. Located at 9943 Lawyers Rd. on approx. 3.80 ac. of land zoned R-1. Hunter Mill District. Tax Map 38-1 ((1)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William C. Thomas Jr., 1733 King Street, Suite 300, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated December 5, 1995. The applicant requested a variance to permit subdivision of one lot into three lots with proposed Lot 3 having a width of 67.48 feet, where 150 feet is required. Therefore, a variance of 82.52 feet was requested.

Mr. Thomas, agent for the applicant, presented the applicant's request as outlined in the statement of justification submitted with the application.

The following spoke in opposition. Hugh Linneman and Patricia Wood. They expressed concerns pertaining to the lack of privacy and damage to trees. Photographs were presented to the Board.

Mr. Thomas addressed the speakers' concerns in his rebuttal.

Mr. Pammel moved to deny VC 95-H-111 for the reasons set forth in the Resolution, subject to Proposed Development Conditions contained in the staff report dated December 5, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-111 by KAREN L. REID, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 3 having lot width of 67.48 feet, on property located at 9943 Lawyers Road, Tax Map Reference 38-1 ((1)) 8, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.80 acres.
4. The application does not meet the nine required standards for variance.
5. The lot configuration is not unusual in size nor shape.
6. The application is for convenience to allow the applicant one more additional lot.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. Kelley, and Mr. Dively voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 1996.

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Zoning Ordinance to permit modification on limits on keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 7135 Oak Ridge Rd. on approx. 11,625 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 57.(MOVED FROM 7/25 AT APP.'S REQ. DEF. FROM 10/24 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Margaret Burns, 7135 Oak Ridge Road, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated July 18, 1995. The applicant requested a special permit for a modification to the limitation on the keeping of animals to allow four dogs on a lot containing less than 12,500 square feet. The applicant's property contains 11,625 square feet.

Margaret Burns presented the special permit request as outlined in the statement of justification submitted with the application. She submitted letters of support from adjacent neighbors and said she would abide by the proposed development conditions.

Ed Muddiman, 7140 Oak Ridge Road, spoke in support of the application.

Mr. McPherson moved to grant SP 95-M-033 for the reasons set forth in the Resolution, subject to Proposed Development Conditions contained in the staff report dated July 18, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-033 by MARGARET ELLEN HORSKY BURNS, under Section 8-917 of the Zoning Ordinance to permit modification on limits on keeping of animals to permit four dogs on a lot containing less than 12,500 square feet, on property located at 7135 Oak Ridge Road, Tax Map Reference 50-3 ((4)) 57, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,625 square feet.
4. The application meets the general standards for special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the property on Tax Map 50-3 ((4)) 57 shown on the plat submitted with this application prepared by Harry Otis Wright, Jr., dated August 15, 1951, revised

by Margaret E. Burns, dated March 30, 1995, and is not transferable to other land.

2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicants' existing four (4) dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used to exercise the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.
5. The dogs shall not remain in the yard unsupervised.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall be legally established until this has been accomplished.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 332, December 12, 1995, (Tape 1), Scheduled case of:

9:30 A.M. DAR AL-HIJRAH, SPA 84-M-009 Appl. under Sect(s). 8-015 of the Zoning Ordinance to permit additional time to establish the special permit amendment. Located at 3159 Row St. on approx. 3.48 ac. of land zoned R-3. Mason District. Tax Map 51-3 ((1)) 19B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry Becker, 5520-B Hempstead Way, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated December 12, 1995. The applicant had requested additional time to establish the special permit amendment. Mr. Hunter said staff was recommending three months making the expiration date January 13, 1996.

The applicant's agent, Mr. Becker, presented the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman closed the public hearing.

Mr. Kelley moved to approve the additional time request for SPA 84-M-009. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 332, December 12, 1995, (Tape 1), Scheduled case of:

9:30 A.M. DAVIN AND PATRICIA CHARLTON, Appeal 95-L-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants have erected an accessory structure (tree house) which exceeds 7 ft. in height too close to the rear lot line in violation of Zoning

Ordinance provisions. Located at 5820 LaVista Dr. on approx. 13,277 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (E) 5.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated December 1, 1995. He presented photographs of the subject property to the Board.

Mr. Dively questioned Mr. Shoup concerning whether the appellants were informed that they could apply for a special permit. He indicated that the appellants had been informed but wanted to proceed with the appeal.

Davin Charlton, 5820 LaVista Drive, Alexandria, Virginia, said he did not believe the tree house was an accessory structure and neither did the people in the neighborhood. He said the structure does not have a roof or walls.

Ralph Featherstone, 5818 LaVista Drive, spoke in support of the appellant's position. He said the structure was attractive and this was the only place for the children to play.

The Board members and Mr. Shoup discussed the definition of accessory structure.

Chairman DiGiulian closed the public hearing.

Mr. Dively said he did not think the Zoning Administrator's interpretation was unreasonable but the intention of Zoning Ordinance was not to bring treehouses within the domain of accessory structures. He said the Board should find in favor of the homeowner to obtain the maximum use of his property. Mr. Dively moved to overturn the decision of the Zoning Administrator for Appeal A 95-L-056, on the grounds that it was not an accessory structure. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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9:30 A.M. ELI M. ROSENBAUM & CYNTHIA BARVIN, Appeal 95-D-057 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants are maintaining shrubbery on their corner lot at such height and dimension as to obstruct sight distance in violation of Par. 1 of Sect. 2-505 of the Zoning Ordinance. Located at 6830 Melrose Dr. on approx. 14,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (A) 1.

Chairman DiGiulian noted that the letter of violation had been rescinded. Mr. Dively made a motion to withdraw the application. Hearing no objection, the Chair so ordered. Mr. Hammack was not present for the vote.

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9:30 A.M. RICHARD CORNICELLO, Appeal 95-M-059 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant's operation of an asphalt sealing business and the storage of related equipment and vehicles is a contractor's office and shop which is not permitted in the C-6 District. Located at 7130 C Little River Tnpk. on approx. 17,337 sq. ft. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((1)) 111.

Mr. Dively moved to defer Appeal A 95-M-059 to the morning of January 30, 1996. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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9:30 A.M. BRUCE L. HECOX, APPEAL 94-L-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's use of property at 5520 Franconia Rd. as a towing service is in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 5520 Franconia Rd. on approx. 19,194 sq. ft. of land zoned C-6. Lee District. Tax Map 81-4 ((1)) 70. (DEF. FROM 3/1/94 TO ALLOW APP. AN OPPORTUNITY TO RESOLVE OUTSTANDING ISSUES. DEF. FROM 6/2 TO RESOLVE OUTSTANDING ISSUES. DEF. FROM 9/27/94, 1/3/95, AND 6/13/95 TO ALLOW BOARD OF SUPERVISORS TO HEAR SPECIAL EXCEPTION.

William Shoup, Deputy Zoning Administrator, said the application involved a towing service operation from the property as a principal use. He said if the appellant re-established the service station use there would no longer be a violation. Mr. Shoup said the appellant obtained special exception approval but had requested additional time to establish that use. The Board of Supervisors approved the additional time request on December 11, 1995, however, concern was expressed by the Board pertaining to financing and staff was asked to carefully monitor and review any further requests for additional time. Mr. Shoup said staff had the same concern, given how long the violation has existed. He said staff would reluctantly support the deferral to July 9, 1996, and if the issue was not resolved they would recommend dismissal.

Bruce Hecox informed the Board that financing had been approved by Patriot National Bank.

Mr. McPherson moved to defer Appeal A 94-L-002 to the morning of July 9, 1996. Mr Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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9:30 A.M. KEITH W. & PHYLLIS P. SHERPER, VC 95-M-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 3252 Juniper Ln. on approx. 30,519 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((3)) 39A. (DEF. FROM 12/5/95 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant would like to further defer the application.

Michelle Rosati, agent for the applicant, discussed the reasons for the deferral request.

Mr. Ribble moved to defer VC 95-M-106 to January 9, 1996 at 9:00 a.m. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Approval of December 5, 1995 Resolutions

Mr. Pammel moved to approve the December 5, 1995 Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Approval of September 26, 1995 and November 9, 1995 Minutes

Mr. Kelley moved to approve the September 26, 1995 and November 9, 1995 Minutes. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Approval of October 10, 1995 Minutes

Mr. Kelley moved to approve the October 10, 1995 Minutes. Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Mr. Hammack was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:13 a.m.

Minutes by: Regina Thorn and Teresa Wang

Approved on: March 5, 1996

Betsy S. Hartt
Betsy S. Hartt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 2, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation.

The first order of business was the election of Chairman, Vice Chairman, and Clerk to the Board of Zoning Appeals for the 1996 calendar year.

Mr. Kelly nominated John DiGiulian for Chairman. Hearing no other nominations, Mr. Hammack seconded the nomination which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mr. Kelley nominated John Ribble and Paul Hammack to serve as Vice Chairman. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mr. Kelley nominated Betsy Hurtt to serve as Clerk to the Board of Zoning Appeals. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 337, January 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOHN & KIMBERLY WEILER, VC 95-V-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 8011 Washington Ave. on approx. 15,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 19 and 20. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Anthony Weiler, 8011 Washington Avenue, Alexandria, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 5.3 feet from the side lot line.

Mr. Weiler said he would like to enclose an existing carport to be utilized as an office for his consulting business. He added that the addition will be no closer to the lot line than the existing carport and will be compatible with the neighborhood and dwelling.

Chairman DiGiulian asked if he had understood correctly that the addition would be no closer to the lot line and Mr. Weiler said that was correct. In response to a question from Mr. Hammack as to the length of time the carport had existed, Mr. Weiler said approximately 50 years. Mr. Weiler introduced his architect who had no additional comments.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 95-V-124 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 2, 1995. The applicant requested that the eight day waiting period be waived and the BZA agreed to do so.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-124 by JOHN AND KIMBERLY WEILER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.7 feet from side lot line, on property located at 8011

Washington Avenue, Tax Map Reference 102-2((12))19 and 20, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,000 sq. ft.
4. The applicant has satisfied the nine required variance standards; in particular, this carport has existed on the site for a long period of time.
5. It is an older neighborhood with what would be considered substandard lots.
6. The lot has a narrow configuration.
7. The proposal will not change the nature of the Zoning Ordinance nor will it be contrary to the existing zoning in the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 13, 1995, revised through October 26, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The Board also waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 339, January 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. ROBERTS, VC 95-D-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 925 Cup Leaf Holly Ct. on approx. 20,038 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 70. (DEF. FROM 11/14/95 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James C. Roberts, 925 Cup Leaf Holly Court, Great Falls, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He noted that Outlot E located between the subject property and Holly Knoll Drive is now shown on the plat, therefore this is not a thru lot and the swimming pool and fence are not located in a front yard. The applicant's request therefore was for a variance of 14 feet to the side lot line to permit construction of an addition.

Mr. Roberts said he has lived on the property for approximately 20 years and spent much of that time upgrading the house. He said he now has four children and would like to expand the living space and add an office that would double as a guest room. Mr. Roberts said this was the only feasible location for the addition because of the way the house is sited on the lot due to the variance of 6 inches that was granted to the builder prior to the construction of the house. The neighbors have no objections and the president of the homeowners association has indicated that the association supports the request.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel pointed out that the staff report depicts a minimum side yard of 20 feet but on the north side of the lot the dimension is only 18.4 feet. He asked staff what the R-1 Cluster minimum yard requirements were and if there was some distinction. Mr. Hunter said the side yard for a lot zoned R-1 Cluster is 12 feet with a total minimum of 40 feet. After researching the measurements, Mr. Hunter said Mr. Pammel was correct and it appeared that the applicant would need a variance for the total yards.

Chairman DiGiulian called the applicant back to the podium. Mr. Roberts said when the house was built in the 1970's a variance was required to bring the house into compliance. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that perhaps the Board would like to continue the hearing until later in the meeting to allow staff an opportunity to talk with the Application Acceptance Branch to determine why the need for the variance for the total side yards was not discovered when the application was filed. The Chairman asked staff to verify if a variance was granted when the house was originally constructed.

Mr. Kelley made a motion to continue the public hearing until later in the meeting. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 340, January 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. POTOMAC CUSTOM BUILDERS, VC 95-D-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 15.0 ft. from street line of a corner lot. Located at 1950 Rhode Island Ave. on approx. 15,319 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 17 and 18. (DEF. FROM 11/14/95 AT APP.'S REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Barnes Lawson, Jr., replied that it was.

Chairman DiGiulian noted that the applicant had submitted a request for a deferral and polled the audience to determine if anyone was present who wished to speak.

Jim Meehan, President of the Franklin Area Citizens Association, said the last time this application came before the Board it was deferred and one of the compelling reasons the Board mentioned for granting the deferral was its desire to have input from all the citizens. Mr. Meehan pointed out that the citizens were present and ready to proceed. He submitted twenty-three additional letters in opposition to the request.

Mr. Lawson said the deferral would allow the applicant an opportunity to come up with a design that is marketable given the by-right layout of the property. He said the neighbor who would be the most impacted has no objections to the request but is presently out of the country. Mr. Lawson requested a forty-five to ninety day deferral.

A discussion took place between the BZA and the agent as to why it had taken so long to bring the application before the Board. Mr. Lawson explained that the applicant was very surprised of the extent of the opposition and has been trying to come up with a design that would be acceptable to the community.

Mr. McPherson made a motion to deny the deferral request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance of 20 feet to allow a dwelling to be located 15 feet from one lot line of a corner lot. Ms. Langdon noted that staff had received six opposition letters in the past week.

Chairman DiGiulian noted that the Board was given twenty-three additional opposition letters at the beginning of the public hearing.

Mr. Lawson said the neighbor's opposition was made known to the applicant during a meeting held last fall when the issue of the tree removal was brought forth. The applicant's plans were submitted to the County staff and everything has proceeded according to those approvals. He said the lot is a corner lot and the narrow side abuts Rhode Island Avenue and the long side abuts Kensington Street, which is an unimproved and unbuilt road that is 30 feet in width with extreme topography. Mr. Lawson noted that the Comprehensive Plan suggests that Kensington Street be retained as a nature way or a green way. The

subject property has all the detriments of a corner lot, without the benefits of having a corner lot. He said one of the most important factors in constructing a house is to site the house correctly on the lot which is to have the length of the house facing the frontage which is the longest. Mr. Lawson said this cannot be done because Kensington Street does not exist, and if the variance is not granted the house will face, which is for all practical purposes, the side lot line. He said the applicant's hardship is twofold. First, the applicant is forced to site the house back from the road as if the road is built but yet it probably will never be built. The second hardship is that the applicant is unable to use the property in the same manner as the neighbors. He proceeded to discuss the setback of other houses on the street. Mr. Lawson said variances are not a popularity contest and by their nature they tend to have a limited impact on a neighborhood. He said the issues raised by the most impacted neighbor have been addressed, the request has been reduced from 20 feet to 10 feet, and submitted photographs to the Board.

A discussion took place between the Board and Mr. Lawson with regard to whether the lots could have been developed as a matter of right and what the setbacks would have been. It appeared a house could be constructed on the lot and all of the minimum yards could be met, al beit not in the same location as currently proposed.

There were no speakers in support and Chairman DiGiulian called for speakers in opposition to the request.

The following citizens came forward: James Meehan, President of the Franklin Area Citizens Association; Annie Knight, 2013 Lorraine Avenue, McLean, Virginia; Clarissa Collards, 1930 Rhode Island, McLean, Virginia; Carolyn Rapp, 2002 Lorraine Avenue, McLean, Virginia; Laduska Adriance, 2110 Virginia Avenue, McLean, Virginia; Philip Metcalf, 2046 Rockingham Street, McLean, Virginia; Charles Pistornio, 1960 Rockingham Street, McLean, Virginia; Brooke Cain, (no address given), member of the Citizens Task Force for the Comprehensive Plan and was one of the three people from the Citizens Association who was responsible for the language that appears in the Comprehensive Plan regarding the Franklin area; Joanne March, 1872 Rhode Island, McLean, Virginia; and, Laura Beatty, (no address given).

A discussion took place between the Board and Mr. Meehan regarding whether the citizens would support the variance if it were reduced to 10 feet as stated by the agent. Mr. Meehan said they would not and noted that perhaps a compromise could have been reached if the applicant had approached the neighbors prior to making changes on the site. He added that the applicant increased the planned house to 3,800 square feet as opposed to the original 3,200 square feet.

The citizens' opposition was based on the developer's lack of concern for the environment, the precedent setting nature of the variance request, their belief that the variance would be in conflict with the Comprehensive Plan, and the fact that the builder could build a smaller house facing Rhode Island Avenue without a variance. They asked the Board to deny the application and preserve the character of the neighborhood.

During rebuttal, Mr. Lawson pointed out that there is a steep ravine that runs parallel to Rhode Island Avenue some depth into the subject property which would have necessitated the need to cross the stream in three places. Because of the impact this would have had on the property, the applicant concluded it would be better to remove the stream and install pipe. Mr. Lawson said the applicant is not trying to build a larger house, or get more money; he is merely trying to orient the house in a way that is more logical on the site. He said the bottom line is does this property have a hardship and should the BZA grant relief; he believed the answer is "yes".

In response questions from the BZA, Mr. Lawson replied Lot 20 had a setback of 23.3 feet from Kensington, the house on Lots 77 and 78 is 19.9 feet from Kensington, and the house on Lot 75 complies with the setback. He added that the owner of Lots 77 was granted a variance in 1980 to allow an addition to the house towards Lot 79.

Chairman closed the public hearing.

Mr. McPherson made a motion to grant VC 95-D-101 in part and allow construction 25 feet from the street line of a corner for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 7, 1995. The BZA informed Mr. Lawson that a revised plat would have to be submitted within thirty days in conformance with the approval.

Mr. Pammel supported the motion based primarily on the legal issues and facts before the BZA. He added that he believed the proposal was better for the community as opposed to the applicant selling the lots individually and noted that the 10 foot variance was minor. Mr. Pammel said it appeared from the testimony that the developer has created "ill will" in the community which is unfortunate.

Mr. Hammack agreed with Mr. Pammel's comments and pointed out that the BZA hears cases routinely involving lots of this size and it is charged with giving a certain amount of relief, which is what the hardship is all about.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-101 by POTOMAC CUSTOM BUILDERS, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 15.0 ft. from street line of a corner lot (**THE BZA GRANTED 25 FT.**), on property located at 1950 Rhode Island Avenue, Tax Map Reference 41-1((13))(5)17 and 18, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,319 sq. ft.
4. It is the Board's duty to review an application objectively and not get into a lot of "who struck John" or "who is mad at who" and from the testimony it appears that the requirements have been met and there is a hardship.
5. The BZA granted approval for a dwelling not more than 48 feet in width to be constructed no closer than 25 feet to the side lot line based on the submission of revised plats.
6. The BZA believed the applicant's request was the best solution for the community and noted that a 10 foot variances was relatively minor.
7. The BZA expressed concern with the citizens' testimony relating to the insensitivity of the developer.
8. The community could explore other possibilities to protect the existing trees.
9. In this instance, the variance is justifiable and in the long run will better serve the community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART** with the following limitations:

- 1. This variance is approved for the location of the dwelling shown on the plat prepared by Walter L. Phillips, Incorporated, dated July 28, 1995, as revised through January 19, 1996 and approved with this application and is not transferable to other land. The footprint of the dwelling may change, but the side yard adjacent to Kensington Street shall not be less than 25.0 feet and the dwelling not more than 48.0 feet in width. A revised variance plat that incorporates the features of the development conditions shall be submitted within thirty (30) days of the Board of Zoning Appeals decision on this variance. The Board of Zoning Appeals' action does not become final until eight (8) days after the revised variance plat is submitted to and approved by the Board of Zoning Appeals.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 30, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 344, January 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. GRAHAM ROAD UNITED METHODIST CHURCH, SPA 91-P-040-2 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to permit an increase in parking. Located at 2929 Graham Rd. on approx. 1.91 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((8)) 10, 11, 47B and 48.

Mr. Hammack made a motion to defer SPA 91-P-040-2 to January 16, 1996 at 9:00 a.m. as suggested by staff. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 344, January 2, 1996, (Tape 1), Scheduled case of:

9:30 A.M. GESHER JEWISH DAY SCHOOL OF NORTHERN VIRGINIA, SP 95-P-066 Appl. under Sect(s). 3-104 of the Zoning Ordinance to permit a synagogue and related facilities and a private school of general education. Located at 9124 Little River Tnpk. on approx. 4.82 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((1)) 50.

Mr. Hammack informed the Board and the audience that the applicant and the citizens had agreed to defer the application to January 23, 1996, at 8:00 p.m. to allow the Planning Commission an opportunity to review the application. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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The BZA recessed at 11:40 a.m. and reconvened at 11:50 a.m.

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Page 344, January 2, 1996, (Tape 2), Scheduled case of:

9:00 A.M. KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to permit increase in land area and parking spaces, temporary classroom trailers and reduction to minimum yard requirements based on error in building location to allow shed to remain 6.0 ft. from side lot line. Located at 8526 Amanda Pl. on approx. 12.66 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35, 36, 37, 38 and 38A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Mark Mittereder, AIA, ArchGroup, Inc., 7360 McWhorter Place, Suite 200, Annandale, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report which outlined the applicant's request and noted that staff recommended approval of SPA 83-P-057-3 subject to the Proposed Development Conditions. She noted that no letters had been received regarding the application.

Mr. Mittereder said the church agreed to the development conditions with minor changes. He asked that Condition 7 be amended to require the wheel stops just along Amanda Place and Cedar Lane. With regard to Conditions 11 and 12, Mr. Mittereder asked that Number 11 be clarified to allow clearing and grading if it is required by the Department of Environmental Management.

There were no speakers in support of the application and Chairman DiGiulian called for speakers in opposition to the request.

David Difiore, owner of Lot 11, said Heather Upton, owner of Lot 1, was also present. He submitted letters to the BZA. Mr. Difiore said he was not opposed to the church but that he was concerned with the church making changes to the subject property and then coming to the BZA for approval. He noted concerns

with the impact that the clearing has had on the wildlife, the runoff, the screening, and the impact the changes are having on the neighborhood.

During rebuttal, Mr. Mittereder said he was the agent for the church during the previous application and since that time there has been a change in leadership which has generated some confusion.

Jonathan Soon, Administrator of the church, said the church was not aware that what they were doing was not in compliance with the special permit; they were merely trying to address the neighbor's request by cleaning up debris and removing dead trees from the site.

Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 83-P-057-3 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report with changes to Conditions 7 and 11 as requested by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-P-057-3 by KOREAN CENTRAL PRESBYTERIAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to permit increase in land area and parking spaces, temporary classroom trailers and reduction to minimum yard requirements based on error in building location to allow shed to remain 6.0 feet from side lot line, on property located at 8526 Amanda Place, Tax Map Reference 49-1((1))35, 36, 37, 38, and 38A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 and R-4.
3. The area of the lot is 12.66 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-903 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Mark Mittereder of ArchGroup dated November 27, 1995 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by DEM. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The maximum number of seats in the main area of worship shall be 500.*
6. 328 parking spaces shall be provided as shown on the special permit plat. Overflow parking may be provided at the Thoreau Intermediate School so long as the applicant obtains and maintains a valid agreement with the appropriate County agency.* All other parking shall be on-site. There shall be no parking on Amanda Place.*
7. All parking lots shall be constructed and maintained in accordance with the standard practices approved by the Director of the Department of Environmental Management.* Both entrance and exit locations for the proposed parking lot shall be aligned with the entrance and exit locations of the existing parking areas on the north side of Amanda Place. If a waiver of dustless surface requirements is granted by the Department of Environmental Management, pavement shall be placed from the edge of the abutting roadway for a minimum of 25 feet into the interior of the site at both entrance and exit locations to prevent the parking area surfacing material from entering the abutting street.* In addition, individual wheel stops shall be provided for each unpaved parking space along Amanda Place and Cedar Lane as requested by the applicant.
8. All interior landscaping for the proposed parking lot shall be provided in accordance with Article 13. Peripheral parking lot landscaping shall be provided as shown on the special permit plat, except that street trees shall be added to those areas where the proposed parking lot fronts Amanda Place and Cedar Lane.
9. Transitional Screening shall be modified along all lot lines, except for the southern property lines of Parcels 35 and 36, to allow existing vegetation and the proposed landscaping shown on the special permit plat to satisfy the Transitional Screening requirements. Existing vegetation shall be supplemented along the southern property lines of Parcels 35 and 36 to provide the equivalent of Transitional Screening 1 as approved by the Urban Forestry Branch of the Department of Environmental Management.
10. The barrier requirement shall be waived on all lot lines.*
11. Limits of clearing and grading shall be as shown on the special permit plat, except in the area of the stormwater management as required by the Department of Environmental Management. There shall be no structures and no clearing or grading of vegetation in this area except for dead or dying trees.*
12. If an a Storm Water Management area is deemed necessary by the Department of Environmental Management, the Storm Water Management areas shown on the special permit plat shall be designed and engineered to fulfill requirements for Best Management Practices to the satisfaction of the Director of the Department of Environmental Management.
13. If the shed on Parcel 38A is removed for any reason, it may be replaced provided the minimum required yards are met.*
14. The three temporary trailers shall be removed within 2 years of obtaining a Non-Residential Use Permit, or on or before January 10, 1999, whichever comes first.
15. Right-of-way to 26 feet from the centerline of Amanda Place shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of

site plan approval, whichever comes first. Ancillary construction easements shall be provided to facilitate these improvements.*

16. Right-of-way to 45 feet from the centerline of Cedar Lane shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary construction easements shall be provided to facilitate these improvements.

These conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval** unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

*Denotes previously approved conditions.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

**This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 347, January 2, 1996, (Tape 1), Scheduled case of:

JAMES C. ROBERTS, VC 95-D-103

Mr. Pammel said staff had informed him that the application would require readvertising to reflect the total side yard requirements; therefore, he moved to defer VC 95-D-103 for purposes of readvertising to January 30, 1996, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 347, January 2, 1996, (Tape 1), Scheduled case of:

9:30 A.M. KINGSTOWNE E & F L.P., SP 95-L-072 Appl. under Sect(s). 5-403 of the Zoning Ordinance to permit a health club. Located at 5825 Barclay Dr. on approx. 7.94 ac. of land zoned I-4. Lee District. Tax Map 91-2 ((1)) 31. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter L. Rinek, 1835 Alexander Bell Drive, Suite 120, Reston, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and recommended approval of SP 95-L-072 subject to the Proposed Development Conditions. She noted that staff had received no letters regarding this application.

Mr. Rinek said the lessee obtained a building permit approximately two months ago and was in the process of writing contracts with clients when he was told that a special permit was necessary.

Marie Kosmocos, 7826 O'Dale Street, Springfield, Virginia, said they have worked hard to complete the facility and now have over 200 committed members who are anxiously awaiting the opening of the facility. She asked that the BZA waive the eight-day waiting period if it was their intent to grant the application.

There were no speakers and Chairman DiGiulian closed the public hearing. He noted that although the date on the staff report was January 2nd; he had received it in the mail on December 21st.

Mr. Dively made a motion to grant SP 95-L-072 for reasons noted in the Resolution and subject to the Development Conditions contained in the staff report. The BZA waived the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-072 by KINGSTOWNE E & F.L.P., under Section 5-403 of the Zoning Ordinance to permit a health club, on property located at 5825 Barclay Drive, Tax Map Reference 91-2((1))31, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is I-4.
3. The area of the lot is 7.94 acre site.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by James H. Scanlon for the BC Consultants dated October 31, 1995 and approved with this application, as qualified by these development conditions. This approval shall not preclude other by-right, special exception, or special permit uses from being established on this property if such do not affect this special permit use.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Hours of operation shall not commence prior to 5:30 a.m. nor extend past 10:00 p.m., Monday through Friday. Hours of operation shall not commence prior to 8:00 a.m. nor extend past 8:00 p.m., Saturday through Sunday.
5. The maximum occupancy load shall be limited to 75.
6. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance.
7. Barrier requirements shall be waived along all boundary lines of Parcel 31.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 2, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 349, January 2, 1996, (Tape 1), Scheduled case of:

9:30 A.M. CHONG C. KIM, SP 95-M-067 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial indoor recreation use. Located at 4231-H Markham East Center on approx. 3.13 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((20)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, attorney with McCanlish and Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the applicant was requesting special permit approval of a Group 5 commercial indoor recreation use to allow the establishment of Karaoke music rooms and dancing within an existing structure with food service as an accessory use. Mr. Hunter said staff recommended approval subject to the Revised Development Conditions dated January 2, 1996 distributed to the BZA just prior to the public hearing.

Mr. Fox said this application, while quite new to the County, is very different but is in keeping with the Comprehensive Plan and the nature of the shopping center and community. He asked the BZA to approve the request.

Mr. Hammack made a motion to grant SP 95-M-067 for the reasons noted in the Resolution and subject to the Revised Development Conditions dated January 2, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-L-067 by CHONG C. KIM, under Section 4-603 of the Zoning Ordinance to permit a commercial indoor recreation use, on property located at 4231-H Markham East Center, Tax Map Reference 71-1((20))3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-6, HC, and SC.
3. The area of the lot is 3.13 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4231-H Markham East (2,500 square feet) and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this indoor commercial recreation use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the grading plan prepared by Patton, Harris & Rust dated November 1972, revised through June 5, 1978 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. There shall be a maximum of 78 patrons in the facility, 4231-H Markham Street at any one time.
5. The hours of operation shall be limited to 12 noon to 2 a.m., daily.
6. There shall be a maximum of three (3) employees at any one time associated with this use.
7. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be Determined by the Director, Department of Environmental Management.
8. Prior to the issuance of the Non-Residential Use Permit for this use, accessible parking spaces shall be designated in the parking lot near the building entrance.

9. The existing vegetation on-site shall satisfy the transitional screening requirement. Interior and peripheral parking lot landscaping shall be maintained as shown on the grading plan submitted with this application. The barrier requirement shall be waived along all lot lines.
10. Signs shall be permitted in accordance with Article 12, Signs.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 351, January 2, 1996, (Tape 2), Scheduled case of:

9:30 A.M. JOSEPH W. CROSON, TERRY A. CROSON, APPEAL 95-Y-061 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a paving business with storage of related equipment and vehicles a use which is not permitted in the R-1 District and is therefore in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 4800 Stringfellow Rd. on approx. 1.43 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-1 ((5)) 3 and 4.

Joseph W. Croson, 4800 Stringfellow Road, Centreville, Virginia, said he has lived on the subject property since 1955 and purchased the property from his brother in 1964. Mr. Croson said he is self-employed and operated an asphalt paving until approximately two years ago. He said he uses the dump truck which is stored on the subject property when he is doing hauling jobs for people. Mr. Croson said has cooperated with the County and kept his property neat, but disagrees with their finding that he is operating a paving business and listed the various pieces of equipment and vehicles on the property. He said his problems began when Hazel & Peterson began buying all the property around him.

William Shoup, Deputy Zoning Administrator, presented staff's position as outlined in the staff report dated December 19, 1995. He called the BZA's attention to the photographs of the subject property and discussed the various items stored on the property. Mr. Shoup said it appears that an office is being conducted out of the trailer with related storage constituting a contractor's office and shop use, which is only permitted in the C-8, I-5, and I-6 District. Therefore, it was staff's position that the use of the property is in violation of Par. 5 of Sect. 2-302. Mr. Shoup said Notice of Violations have been issued over the years for various things, which he believed related back to the actual activity of the property which is dealing with commercial vehicles, construction property, and outside storage on the property.

There were no speakers and Chairman DiGiulian called the appellant back to the podium.

Mr. Crosson said there are two sheds on the property which he uses for storing his lawnmower and his motorcycle. He explained that he purchased a portico to replace a portion of his garage which was struck by lightning. Mr. Crosson said many of the items have been removed.

Mr. Shoup said there is still a lot of equipment stored on the property.

A discussion took place between Mr. Hammack and Mr. Crosson with regard to the use of the sheds. Mr. Crosson outlined what he had removed from the site.

Mr. Pammel made a motion to uphold the Zoning Administrator. Mr. Dively seconded the motion. Mr. Pammel said he believed the appellant has taken steps to remove items from the lot but the Zoning Administrator can take appropriate action to bring the property into compliance. The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The decision became final on January 16, 1996.

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Page 352, January 2, 1996, (Tape 2), Scheduled case of:

9:30 A.M. ROY PERRY, APPEAL 95-M-062 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the parking of two (2) commercial vehicles in an R-2 District and the construction of a detached accessory structure in a rear yard without Zoning Administrator approval of a Building Permit are in violation of Zoning Ordinance provisions. Located at 6544 Fairland St. on approx. .88 ac. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((13)) 3.

Roy Perry, 6544 Fairland Street, Alexandria, Virginia, said he was cited for having two commercial vehicles on the subject property which the Department of Transportation and Department of Motor Vehicles (DMV) class as recreational. Mr. Perry said there is an "accessory structure" which is a fence with a couple of pieces of ply wood on the roof where he keeps his Dodge truck while it is being repaired.

Mr. Hammack asked if the appellant had any documents showing the classification of the vehicles. Mr. Perry presented documents to the Board.

William Shoup, Deputy Zoning Administrator, said after reviewing the registration cards he believed he would need to talk to DMV about the classification. He said from the photographs it appears that both vehicles are trucks, but that staff would be willing to talk to DMV. Mr. Hammack said both vehicles are registered to "Wonder Bug Welding", which suggests that they are commercial. Mr. Shoup said there were two issues, the commercial vehicles and the structure.

A discussion took place between the BZA and the appellant as to how the recreational vehicle was outfitted.

The appellant's son, Rob, said he had helped with the conversion of the recreational vehicle and that he believed the County was "nit picking" and that he believed it bordered on harassment.

An unidentified next door neighbor came forward and said Mr. Perry has cleaned up his property and is always willing to help other neighbors.

In closing remarks, Mr. Shoup said staff believed the structure had to be removed and the registrations clearly showed the vehicles registered to a business. Therefore, staff believed they would be classed as commercial vehicles and the keeping of both vehicles on the property is a violation of the Ordinance. He said if the appellant removes the roof from the structure and turns it into a fence that is in compliance with the Ordinance, that would be acceptable.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. McPherson said he appreciated the appellant's position but it was clear that the two trucks are titled as commercial; therefore, the one vehicle could not be construed as a motor home under the provisions of the Ordinance at this point. He made a motion to uphold the Zoning Administrator in Appeal 95-M-062.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The decision became final on January 16, 1996.

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Page 353, January 2, 1996, (Tape 2), Action Item:

Request for Reconsideration for Karen Reid, VC 95-H-111

William C. Thomas, Jr., Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, said he believed there were topographic conditions and site configuration restrictions that warrant the granting of a variance. Chairman DiGiulian said in the absence of a motion the request for reconsideration was denied.

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Page 353, January 2, 1996, (Tape 2), Action Item:

Approval of Resolutions from December 12, 1995.

Mr. Pammel made a motion to approve the Resolution as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 353, January 2, 1996, (Tape 2), Action Item:

Approval of Minutes from September 26, 1995, October 24, 1995
and November 21, 1995

Mr. Hammack made a motion to approve the Minutes as submitted. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 353, January 2, 1996, (Tape 2), Action Item:

Request for Additional Time for First Church of Christ, Scientist, SP 93-H-009

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant was not able to commence construction in a timely manner due to the lack of funds. Mr. Pammel made a motion to grant the applicant's request. Hearing no objection, the Chair so ordered. The new expiration date is December 30, 1997.

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Page 353, January 2, 1996, (Tape 2), Action Item:

Request for Additional Time for Sang Oh & Company, Inc., SPA 85-S-059

Mr. Pammel noted that additional time is needed to complete the County review process and commence construction. He then made a motion to grant the applicant's request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is July 8, 1997.

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Page 354, January 2, 1996, (Tape 2), Action Item:

Out of Turn Hearing Request for VC 95-V-132, Rizwan and Mahboob

Mr. Pammel made a motion to grant the applicant's and scheduled the case for February 13, 1996, at 9:00 a.m. as suggested by staff. Hearing no objection, the Chair so ordered.

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Page 354, January 2, 1996, (Tape 2), Action Item:

Expiration of Term for Robert Kelley

Mr. Pammel made a motion that the Board give its unqualified endorsement that Robert Kelley be reappointed to another term on the Board of Zoning Appeals. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 Noon

Minutes by: Betsy S. Hurtt

Approved on: March 26, 1996

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 16, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 355, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JOHN ZUIKER, VC 95-Y-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line such that side yards total 19.9 ft. Located at 14704 Baugher Dr. on approx. 12,015 sq. ft. of land zoned R-3, PDH-3, WS and AN. Sully District. Tax Map 44-3 ((3)) 10A and 44-3 ((2)) (39) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Zuiker, 14704 Baugher Drive, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The applicant requested a variance of 6.8 feet to the side yard and 0.1 feet for the total side yards.

Mr. Zuiker presented the variance request as outlined in the statement of justification submitted with the application. He noted that several variances had been granted in the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-V-109 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-115 by JOHN ZUIKER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.2 feet from side lot line such that side yards total 19.9 feet, on property located at 14704 Baugher Drive, Tax Map Reference 44-3 ((3)) 10A and 44-3 ((2)) (39) 6, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3, PDH-3, WS, and AN.
3. The area of the lot is 12,015 square feet.
4. The applicant met the required standards for a variance.
5. The variance request was minimal.

6. The requested location is the only place to put the carport.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Dewberry & Davis dated August 28, 1995, and revised October 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 357, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JAMES A. & SUSAN A. STALP, SP 95-B-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit one shed to remain 1.5 ft. and eave to remain 0.3 ft. from side lot line and other shed to remain 4.3 ft. from side and rear lot lines and to exceed 200 sq. ft. Located at 7418 Dunston St. on approx. 11,025 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (25) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Stalp, 7418 Dunston Street, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated January 9, 1996. The applicant's special permit request was for reduction to the minimum yard requirements based on an error in building location. A modification of 10.5 feet was required for the first shed with an 11.7 foot modification for the eave. A modification of 7.7 feet was required for the side yard and 5.8 feet for the rear yard of the shed along the northern side lot line. A modification of 65.69 feet was required for the shed that was 265.69 square feet in size.

Mr. Stalp presented the special permit requests as outlined in the statement of justification submitted with the application. He presented letters from adjoining neighbors supporting the application.

In response to Mr. Hammack's question, Mr. Stalp replied he had not obtained any building permits because he thought the shed was in compliance due to a letter he had received from the Department of Environmental Management. He presented the letter to the Board.

The Board members and staff discussed the procedures of obtaining a permit for building a shed.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SP 95-B-164 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-B-068 by JAMES A. AND SUSAN A. STALP, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit one shed to remain 1.5 feet and eave to remain 0.3 feet from side lot line and other shed to remain 4.3 feet from side and rear lot lines and to exceed 200 square feet, on property located at 7418

Dunston Street, Tax Map Reference 80-1 ((2)) (25) 11, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and specified accessory structure and accessory storage structures shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Apex Surveys dated August 17, 1995, revised through October 18, 1995, submitted with this application.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 359, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JAMES T. & GLORIA S. KLEIN, VC 95-B-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 4918 Chanticleer Ave. on approx. 11,475 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-3 ((5)) 151.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James T. Klein, 4918 Chanticleer Avenue, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated January 9, 1996. The applicant requested a variance of 2.5 feet to the minimum side yard requirement.

Mr. Klein presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 95-M-107 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-114 by JAMES T. AND GLORIA S. KLEIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.5 feet from side lot line, on property located at 4918 Chanticleer Avenue, Tax Map Reference 70-3 ((5)) 151, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 11,475 square feet.
4. The applicant met the required standards for granting a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by David E. DeLew & Associates, dated March 27, 1987, revised by William John Dennehy, Architect, received on October 18, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 361, January 16, 1996, (Tape 1), JAMES T. & GLORIA S. KLEIN, VC 95-B-114, continued from Page 360)

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 361, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JOAN & JACK WHITE JR., VC 95-B-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 7726 Viceroy St. on approx. 11,966 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (69) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Francisco Cortez, 6416 Vale Street, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated January 9, 1996. The applicant requested a variance of 2.2 feet to the minimum side yard requirement.

Mr. Cortez presented the variance request as outlined in the statement of justification submitted with the application. He presented photographs and a letter in support from the adjacent neighbor.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 95-B-117 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-117 by JOAN AND JACK, JR. WHITE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.0 feet from side lot line, on property located at 7726 Viceroy Street, Tax Map Reference 79-2 ((2)) (69) 30, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,966 square feet.
4. The applicant met the required standards for a variance.
5. There are topographical problems.
6. There are converging lot lines which cause a narrow lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the general location of the addition shown on the plat prepared by Payne Associates, dated October 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 363, January 16, 1996, (Tape 1), JOAN & JACK WHITE JR., VC 95-B-117, continued from Page 362

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 363, January 16, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL D. BRUGGEMAN, VC 95-S-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from rear lot line. Located at 6103 Glen Oaks Ct. on approx. 7,669 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Bruggeman, 6103 Glen Oaks Court, Springfield, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated January 9, 1996. The applicant requested a variance of 10.1 feet to the minimum rear yard requirement.

Mr. Bruggeman presented the variance request as outlined in the statement of justification submitted with the application. He presented photographs of the property to the Board.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-S-118 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-118 by MICHAEL D. BRUGGEMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.9 feet from rear lot line, on property located at 6103 Glen Oaks Court, Tax Map Reference 79-3 ((23)) 13, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-5.
3. The area of the lot is 7,669 square feet.
4. The applicant met the required standards for a variance.
5. There are exceptional topographical conditions.

6. The request was simply to replace the existing porch.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the general location of the screen porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated September 22, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of

time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 365, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. WYMAN L. & LULA P. COLONA, VC 95-V-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 1.8 ft. from side lot line and eave 1.4 ft. from side lot line. Located at 8705 Old Mount Vernon Rd. on approx. 8,639 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((6)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wyman L. Colona, 8705 Old Mount Vernon Road, Alexandria, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report dated January 9, 1996 which was prepared by Lori Greenlief. The applicant requested a variance of 8.2 feet to the minimum side yard requirement and 0.6 feet for the eave.

Mr. Colona presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-V-119 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-119 by WYMAN L. AND LULA P. COLONA, under Section 18-401 of the Zoning Ordinance to permit construction of carport 1.8 feet from side lot line and eave 1.4 feet from side lot line, on property located at 8705 Old Mount Vernon Road, Tax Map Reference 110-2 ((6)) 10, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.

3. The area of the lot is 8,639 square feet.
4. Generally, the Board does not grant a variance this close to the property line, but this motion is based on the testimony that the lot is narrow. The concrete slab is already laid and the applicant will only be adding a roof; therefore, based on the narrowness of the lot and the fact that the slab is there the application should be granted.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific carport and eave shown on the plat prepared by Alexandria Surveys, Inc., dated October 11, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Page 367, January 16, 1996, (Tape 1), WYMAN L. & LULA P. COLONA, VC 95-V-119, continued from Page 366)

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 367, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. KHOSRO & CHERYL FARAHANI, VC 95-D-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line such that side yards total 38.7 ft. Located at 1111 Morningwood Ln. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Khosro Farahani, 1111 Morningwood Lane, Great Falls, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report dated January 9, 1996, which was prepared by Lori Greenlief. The applicant requested a variance of 3.3 feet to the minimum side yard requirement and 1.3 feet to the minimum of the total side yards requirement.

Mr. Khosro presented the variance request as outlined in the statement of justification submitted with the application. He presented a petition signed by neighbors in support of the application.

Chairman DiGiulian called for speakers.

Jonathan Butler, member of the Lockmeade Homeowners Association, spoke in support of the application.

Tony Meunier, adjacent property owner, spoke in opposition. He presented a photograph to the Board showing the proximity of the properties.

Mrs. Farahani gave a rebuttal addressing the speaker's concerns.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-D-121 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MOTION TO GRANT FAILED

In Variance Application VC 95-D-121 by KHOSRO AND CHERYL FARAHANI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.7 feet from side lot line such that side yards total 38.7 feet, on property located at 1111 Morningwood Lane, Tax Map Reference 12-3 ((5)) 11, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is 20,800 square feet.
4. The applicant met the required standards for a variance.
5. The variance request was minimal.
6. The location of the dwelling on the lot is more towards the northern property line than the southern property line and the existing garage is located on that side of the structure which is the only location an extended garage can be located.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by James A. Smith & Associates, Inc. P.C., dated May, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion. The motion to grant **FAILED** by a vote of 3-3-1 with Mr. Ribble, Mr. Kelley and Mr. Dively voting nay. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996.

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Page 369, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. WILLIAM E. ELWOOD, VC 95-V-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.9 ft. from street line of a corner lot and 25.5 from other street line. Located at 2016 Glen Dr. on approx. 8,716 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (10) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William E. Elwood, 2016 Glen Drive, Alexandria, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report dated January 9, 1996, which was prepared by Lori Greenlief. The applicant requested a variance to construct a second story addition 26.9 feet from one front lot line and 25.5 feet from the other front lot line. Ms. Kelsey noted that the existing dwelling was constructed in 1939 prior to the adoption of Fairfax County's first Zoning Ordinance so the existing one story portion is not required to meet the current Zoning Ordinance requirement.

Mr. Elwood presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 95-V-122 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-122 by WILLIAM E. ELWOOD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 26.9 feet from street line of a corner lot and 25.5 from other street line, on property located at 2016 Glen Drive, Tax Map Reference 83-3 ((14)) (10) 25, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,716 square feet.
4. The applicant met the required standards for a variance.
5. The lot has a double front yard and an irregular shape.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 13, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 371, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JOSHUA E. BAKER, VC 95-D-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 10903 Georgetown Pi. on approx. 36,154 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joshua Baker, 10901 Georgetown Pike, Great Falls, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report dated January 9, 1996, which was prepared by Lori Greenlief. The applicant requested a variance of 8.5 feet to the minimum side yard requirement. Ms. Kelsey noted the background information contained in the staff report pertaining to a previously approved variance which permitted a subdivision.

Mr. Baker presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-D-123 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-123 by JOSHUA E. BAKER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.5 feet from side lot line, on property located at 10903 Georgetown Pike, Tax Map Reference 12-1 ((1)) 17A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 36,154 square feet.
4. The property is extraordinarily narrow and tapers outward towards the back of the lot. However, the house is located towards the narrowest end of the property which precludes feasibly putting the addition in the backyard because of the well head.
5. The addition is also adjacent to a driveway on a pipestem lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Andrew P. Dunn, dated May 24, 1991, revised by Thomas French, III, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted nay, and Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 373, January 16, 1996, (Tape 1), Scheduled case of :

9:00 A.M. GRAHAM ROAD UNITED METHODIST CHURCH, SPA 91-P-040-2 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to permit an increase in parking. Located at 2929 Graham Rd. on approx. 1.91 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((8)) 10, 11, 47B and 48. (DEF. FROM 1/2 AT APP.'S REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Mueller, 1301 K. Street N.W., Washington, D.C., replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated December 19, 1995.

The applicant's attorney, Mr. Mueller, presented the applicant's request as outlined in the statement of justification submitted with the application. He discussed the concerns the applicant had with the proposed development conditions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 91-P-040-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 19, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 91-P-040-2 by GRAHAM ROAD UNITED METHODIST CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to permit an increase in parking, on property located at 2929 Graham Road, Tax Map Reference 50-3 ((8)) 10, 11, 47B, and 48, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-4.
- 3. The area of the lot is 1.91 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 3-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
- 2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated November 1, 1994, revised through December 4, 1995 and approved with this application, as qualified by these development conditions.*
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. The Board of Zoning Appeals recommended waivers of site plan requirements.
5. The hours of operation for the existing church operated child care center shall be limited to 9:30 a.m. to 12:00 p.m., Monday through Friday. The maximum daily enrollment for this child care center shall be limited to 40. Eight parking spaces shall be required for this use.*
6. The hours of operation for the Graham Road Child Development Center (nursery school) shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday. The maximum daily enrollment for this nursery school shall be limited to 40. Eight parking spaces shall be required for this use.*
7. A six foot high board on board fence shall be maintained along the southern and western sides of the play area located in the southeastern portion of the site. A six foot high board on board fence shall be maintained along the eastern side of the play area located in the northern portion of the site.*
8. The points of access to the parking area from Graham Road and Rosemary Lane shall retain the markings as one-way entrances or exists.*
9. All existing vegetation on the site shall be retained and shall be deemed to fulfill the requirement for Transitional Screening 1 along all of the site's boundaries with the following exception:
 - Evergreen plantings shall be provided between the parking spaces and Graham Road along the western lot line.
10. The existing chain link and wood fences shall be deemed to fulfill the barrier requirements.*
11. The maximum seating capacity in the main area of worship for the church shall be limited to a total of 150 seats. All parking shall be on site as shown on the special permit plat.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1996. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. J.W. FORTUNE, LAMIRABELLE, IVERSON TECHNOLOGY, ET. ALS., APPEAL 95-D-067 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the approval of Site Plan No. 7975-SP-02-2, McLean Square, by the Director of the Department of Environmental Management on the grounds that such site plan violates the applicable provisions of the Zoning Ordinance regarding screening, sanitary sewer service, parking, neighborhood protection, fire lanes, refuse collection and storm water management. Located at 6641 Old Dominion Dr. on approx. 3.22 ac. of land zoned C-6 and HC. Dranesville District. Tax Map 30-2 ((1)) 59.

Henry Fitzgerald, agent for the appellant, said the appellant submitted a request for deferral and spoke with staff and they did not object. He said the reason for the deferral request was because they had just received the staff report on January 4, 1996. Mr. Fitzgerald said new material from the staff was presented in the response which needed to be evaluated. He said the site plan had been amended and they needed an opportunity to respond. Mr. Fitzgerald stated that the owners of the property have an approved site plan and a deferral would not adversely affect them.

Mr. Pammel stated, for the record, that his wife worked for Mr. Fitzgerald's law firm for a period of time more than five years ago and that he did not believe there was a conflict and that he would participate in the deliberations.

Mr. Minchew addressed the deferral request by stating that he would strenuously object to the deferral and would like to proceed with the hearing as scheduled.

John Winfield, Department of Environmental Management, addressed the deferral request by stating he would have no objection.

James Peoples, President of Bryn Mawr Homeowners' Association, addressed the deferral request by stating he had not reviewed the staff report and would concurred with the request.

Mr. Fitzgerald submitted seven letters from applicants who were not able to attend the public hearing but also requested a deferral.

Mr. Pammel said the Board had rather consistently granted deferral requests when there were extenuating circumstances and that Mr. Fitzgerald had clearly indicated that he was not privy to the staff report until January 4, 1996. He said appeals usually involve significant issues and there had been unusual weather conditions. Mr. Pammel said in all fairness to Mr. Fitzgerald and the people he represented, a deferral should be granted.

Mr. Hammack moved to defer Appeal A 95-D-067 to January 30, 1996 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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9:30 A.M. PAUL G. DOUGLAS, Appeal 95-V-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental, and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 6737 Richmond Hwy. on approx. 27,705 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 93-1 ((17)) 1A. (DEF. FROM 11/14/95 FOR NOTICES)

Mr. Dively moved to defer Appeal 95-V-044 to May 28, 1996 at 9:30 a.m. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 377, January 16, 1996, (Tape 2), Action Item:

Request for Reconsideration
Potomac Custom Builders, VC 95-D-101

Mr. Hammack moved to deny the Request for Reconsideration. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 377, January 16, 1996, (Tape 2), Action Item:

Approval of January 2, 1996 Resolutions

Mr. Pammel moved to approve the January 2, 1996 Resolutions. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 377, January 16, 1996, (Tape 2), Action Item:

TAC Group of Virginia, t/a Frugal Fannies
Appeal Acceptance Request

Mr. Pammel moved to accept and schedule the TAC Group of Virginia, t/a Frugal Fannies Appeal for the morning of April 2, 1996. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 377, January 16, 1996, (Tape 2), Action Item:

Raymond and Mary Reppert
Appeal Acceptance Request

William Shoup, Deputy Zoning Administrator, said staff's position was that the application was not complete or timely filed. He referenced the Notice of Violation dated November 2, 1995 for parking commercial vehicles on residential property. Mr. Shoup said some documents were submitted by certified mail on November 30, 1995; however, the appellants did not provide a statement as to how they were an aggrieved party which is a requirement of the Zoning Ordinance. He said they did not provide a check to cover the filing fee and did not file a copy of the application with the Clerk to the BZA, as required by the State Code. Mr. Shoup stated that the appellants were contacted and advised of the deficiencies and informed that the submission requirements had to be fulfilled before December 4, 1995. He said staff had not received anything at that time and on December 7, 1995 they received the check and a copy of the application but a statement of how they were an aggrieved party was not included. Mr. Shoup said since the appeal was not timely filed and not complete, he would recommend that the application not be accepted.

Mr. Pammel moved to deny acceptance of the Raymond and Mary Reppert Appeal. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 377, January 16, 1996, (Tape 2), Action Item:

Request for Additional Time
The Springfield Congregation of Jehovah's Witnesses, SP 92-L-036

Page 378, January 16, 1996, (Tape 2), The Springfield Congregation of Jehovah's Witnesses, SP 92-L-036, continued from Page 377)

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Kelley were not present for the vote. The new expiration date is December 23, 1996.

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Page 378, January 16, 1996, (Tape 2), Action Item:

Mitchell Family Trust; Harold O. Miler, Agent
Appeal Acceptance Request

William Shoup, Deputy Zoning Administrator, said he spoke with Mr. Hansbarger, the agent for the appellant, and Mr. Hansbarger requested that consideration of acceptance of the subject appeal be deferred to January 30, 1996.

Mr. Dively moved to defer the Mitchell Family Trust; Harold O. Miller, Agent Appeal Acceptance Request to the After Agenda of January 30, 1996. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 378, January 16, 1996, (Tape 2), Action Item:

Out of Turn Hearing Request
Elmwood L.L.C., VC 96-L-002

Mr. Keith Martin appeared before the Board and requested an Out of Turn Hearing. He said that he had submitted the application in November and had trouble getting it accepted because of the holidays and the weather. Mr. Martin said the same request had been approved by the Board of Zoning Appeals several years ago, thus is shouldn't take much time.


Mr. Pammel moved to grant the Out of Turn Hearing Request for VC 96-L-002. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Regina Thorn

Approved on: February 20, 1996


Betsy S. Hurt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 23, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 379, January 23, 1996, Tape 1, Scheduled Case of:

8:00 P.M. JERRY D. & KAREN STONE, SP 95-S-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 0.0 ft. from rear lot line and 16.4 ft. from side lot line and 0.1 ft. from other side lot line. Located at 7826 Mulberry Bottom Ln. on approx. 8,584 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((6)) 132. (Concurrent with VC 95-S-094). (DEF. FROM 10/24 FOR ADDITIONAL INFORMATION AND TESTIMONY)

8:00 P.M. JERRY D. & KAREN STONE, VC 95-S-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 6.0 ft. in height to remain and minimum rear yard coverage to exceed 30%. Located at 7826 Mulberry Bottom Ln. on approx. 8,584 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((6)) 132. (Concurrent with SP 95-S-054). (DEF. FROM 10/24 FOR ADDITIONAL INFORMATION AND TESTIMONY)

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and the applicants' agent, William C. Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Alexandria, Virginia, complied.

David Hunter, Staff Coordinator, presented the staff report dated October 17, 1995, outlining staff's position. He advised that a public hearing was held on October 24, 1995, during which Donald Williamson, Coordinator with the Facilities Services Branch of the Fairfax Public School System, testified that the School Board would ask that any encroachment along the rear lot line be eliminated because it would set a precedent. The BZA deferred decision until that evening in order for negotiations to continue between the School Board and the applicants. Mr. Hunter advised that the applicant had submitted building permits which were included in the addendum submitted to the BZA. The building permits had been approved in 1985 and 1989. Mr. Hunter said the applicant had verbally indicated and submitted photos to the Board illustrating that the gazebo had been shorn and no longer encroached upon the School Board property; however, staff had not received a revised plat, nor a survey, to indicate that the encroachment does not exist.

Mr. Thomas said he did not have much to add to Mr. Hunter's presentation, except to reiterate that the remedies available to the applicants had been accomplished.

Mr. Ribble asked Mr. Thomas if the modifications to the gazebo now put the gazebo entirely on the applicants' property and Mr. Thomas said they did.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SP 95-S-054 and VC 95-S-094 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report. He noted that the applicant must submit a revised plat before the decision of the Board would become final.

(NOTE: THE FINAL RESOLUTION CAN BE FOUND ON PAGE _____)

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8:00 P.M. JOHN TSIAOUSHIS, SP 95-Y-069 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a billiard hall. Located at 14114, 14114-B and 14116 Lee Hwy. on approx. 8.60 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and the applicant's agent, Michelle Rosati, complied.

Inda Stagg, Staff Coordinator, presented the staff report dated January 16, 1996, outlining staff's position and stating that staff recommended approval of the application.

Ms. Stagg advised that two letters of conditional support had been received.

Mr. McPherson noted that the Proposed Development Conditions contained a typographical error: The hours of operation were stated to be until 2:00 p.m. instead of a.m. and this correction was noted.

Ms. Rosati presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

Terry Waktel of the Shark Club in his capacity as Executive Director for the Association Director for the Association for Pool said the Association is a corporation in good standing in the Commonwealth of Virginia. He said they provide billiard and league tournament management services for cafes throughout the United States. It was in that association that he had a relationship with the principals at the Shark Club for the past year. Mr. Waktel spoke in support of the application and described the diversity of the new establishments of this type.

Stewart Fitzgerald said he and ten other residents of the area had drafted a letter in support of the application, which he read to the Board.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 95-Y-069 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report, with the correction to 2 a.m. as previously noted.

Mr. McPherson noted that he believed this to be a perfect use in this area.

Mr. Ribble noted that one letter, although in favor, had some concern about children being unsupervised in the establishment.

Mr. Kelley said he was in support of the application and noted that this application had no opposition, which he believed pointed out that this type of establishment was being accepted by the public.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-069 by JOHN TSIAOUSHIS, under Section 4-703 of the Zoning Ordinance to permit a billiard hall, on property located at 14114, 14114-B and 14116 Lee Highway, Tax Map Reference 54-4((1))8C, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the contract purchaser/lessee of the land.
2. The present zoning is C-7, WS, HC and SC.
3. The area of the lot is 8.60 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 14114 - 14116 Lee Highway (13,000 square feet), and is not transferable to other land. This approval shall not preclude other by-right, special exception, or special permit uses from being established on this property if such do not affect this special permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Herman Courson for Springfield Engineering Associates dated September 21, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Hours of operation shall not commence prior to 7:00 a.m. nor extend past 2:00 a.m., daily.
6. Any signage erected on the building shall be of a size and materials which are compatible with existing signage in the shopping center and shall be subject to the requirements of Article 12 of the Zoning Ordinance.
7. The maximum number of pool/billiard tables within the subject property shall be 30. The maximum number of restaurant tables shall be determined by the Director of the Department of Environmental Management (DEM), in accordance with Article 11, based upon the number of available parking spaces; however, restaurant seating capacity shall not exceed 120 and bar seating capacity shall not exceed 70. Maximum seating capacity allowed by the Director of DEM shall incorporate any seasonal outdoor seating. A canopy may be allowed in order to shelter outdoor tables. The maximum size and configuration of the canopy shall be as determined by the Director of DEM.
8. The applicant shall be required to comply with all alcoholic beverage control laws of the State of Virginia.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall

be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 382 January 23, 1996, Tape 1, Scheduled Case of:

8:00 P.M. FIRST PENTECOSTAL CHURCH OF GOD LA BIBLIA, SP 95-M-065 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4905 Backlick Rd. on approx. 3.12 ac. of land zoned R-2. Mason District. Tax Map 71-3 ((1)) 22 and 23. (moved from 12/19)

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Roger M. Valez complied.

David Hunter, Staff Coordinator, presented the staff report dated December 12, 1995, outlining staff's position. He noted that, after consulting with staff and the Office of Transportation that evening, new wording had been developed for the condition regarding the sight distance on Backlick Road. Mr. Hunter said staff recommended approval of the application, subject to the revised Proposed Development Conditions, with the revised wording for Condition 13.

Pastor Valez, presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

Eileen T. Carroll, Planner with Rinker, Detwiler & Associates, said she was prepared to answer questions and provide technical information regarding the stormwater detention sizing, transitional screening, and parking.

Mr. Hammack asked Ms. Carroll if she had read the revised Proposed Development Conditions dated January 23, 1996. She said she had and they and the applicant agreed to all the conditions, including the condition relating to revised sight distance.

The following people spoke in support of the application: Joe Coleman, Annandale Acres, who lives near the site, said it is the most desirable use of the land; property manager, 4905 Backlick Road and 4906 Sunset Lane belonging to Northern Virginia Korean Presbyterian Church, said they were trying to sell the property to the applicant; Roberto Lopez, Bible teacher with The Bible Church in Annandale looked to the applicant for a room to teach his class.

The following people spoke in opposition: Dave Russell, President of Sunset Village Homeowners Association, 4912 Van Masdag, Annandale, Virginia, said he represented the townhouse owners directly across the street from the subject property and said they Board had a petition signed by them; Chip Beveridge, 4922 Sunset Lane; Stephen Seekines, 4917 Sunset Lane, said he represented the residents of Sunset Lane and Sunset Court who submitted a petition in opposition, mainly for reasons of safety (he submitted photos); Michael McQueen, Sunset Village; William Thomas, Esquire, on behalf of some of the residents of Sunset Lane.

Among the concerns were: The desire to have only residential dwellings in the area; other applications for churches in the neighborhood have been denied by the BZA; Sunset Lane is a substandard road, is narrow, dark at night, has a deep ditch along the side, no sidewalks, is slippery in the rain and snow is plowed by the community; sight clearance at the point where the church is proposed would be dangerous; the church would not be serving the surrounding community; 11 other churches in the community already inundate the area with traffic, especially on Sundays.

Mr. Pammel asked Mr. Russel about his mention of maintaining the residential character and asked him to define the term. Mr. Russel said he meant residential detached homes, not townhomes. He said one of the requests for use of the property had been for townhomes and the residents did not want townhomes to go in on the subject property; they wished to maintain the R-2 character of the neighborhood.

Mr. Kelley asked Mr. Russell about the fact that the road was to be widened in the area where the church would be situated across from the development he represented. They discussed the statement that there were cars parked in that area every night and some during week days.

Some further concerns were: Staff had not met with members of the community; a high incidence of traffic accidents at the intersection of Backlick and Braddock Roads, just three tenths of a mile south of the subject property; the high volume of traffic; maintaining the quiet and security; the only access to Sunset Lane is Backlick Road; Bradlick Shopping Center had recently been approved for expansion and would make matters much worse; the facade proposed by the applicant is not harmonious with the neighborhood; disagreement with staff's opinion that the proposal met with the Comprehensive Plan and R-2 zoning; there is inadequate parking; impact of left hand turn lanes; potential incidents of graffiti and vandalism.

Ms. Carroll came forward for rebuttal, stating that they believed the use was in harmony with the residential neighborhood. She stated that there was a problem of visibility and they would grade down the berm and a sidewalk would be installed. Ms. Carroll said they also would provide full frontage improvements along Sunset Road that would be dedicated and constructed, a sidewalk would be installed and the road would be widened. Ms. Carroll said that the parking requirement in the Zoning Ordinance was 118 spaces and they would provide 129 spaces.

Mr. Kelley referenced Proposed Development Condition 6, stating that all parking should be on site and advised Ms. Carroll that, as a practice, most churches could not meet that requirement every single week end of every year, on special holidays, etc., and asked, when that happened, where the congregation would park on those occasions. Ms. Carroll said she did not believe they would all attend one service and there is a shopping center two or three blocks away. Mr. Kelley asked if she believed the congregation would park two or three or four blocks away and walk on Backlick Road to the church. Ms. Carroll said that they might do as the townhouse residents did and park on the street. Mr. Kelley asked where on the street she was referring to. Pastor Valdez said the church had a bus and would buy some more buses and the members of the congregation living in other areas would come in cars full of people.

Mr. Kelley asked staff where the overflow parking would go, in light of the testimony given. Mr. Hunter said it was an enforcement issue but the applicant would be required to make alternative arrangements for off-site parking, as other churches have done. Mr. Kelley said that history has shown that method did not work on, for instance, Easter Sunday; people just came out and parked anywhere. He asked if staff thought they would park on Backlick Road, because there was no room on Sunset because of the ditch. Mr. Hunter said the applicant's alternative would be to split the services or provide for a shuttle bus service from some off-site location. He said the burden was on the applicant and they would have to meet the letter of the conditions.

There were no other speakers and Chairman DiGuilian closed the public hearing.
Mr. Ribble moved to deny SP 95-M-065 for the reasons set forth in the Resolution.

Mr. Kelley seconded the motion, adding that, if access could be gained from Backlick Road, he might have an entirely different outlook about this application. He said he believed the potential traffic on Sunset would create problems and parking would be a very serious concern.

Mr. Dively said that his main concern with the application was that it involved a sub-standard road and he agreed that if there were a way to access from Backlick Road it would present a different situation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit application SP 95-M-065 by FIRST PENTECOSTAL CHURCH OF GOD LA BIBLIA, under Section 3-203 of the Zoning Ordinance to permit a place of worship, on property located at 4905 Backlick Road and 4906 Sunset Lane, Tax Map Reference 71-3((1))22 and 23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the contract purchaser of the land.
2. The present zoning is R-2.
3. The area of the lot is 3.12 acres.
4. The use does not quite fit the property.
5. The request is preceded by another, similar situation involving the mosque at 7 Corners Shopping Center, which also raised an enforcement issue and somehow continued to become worse despite endeavors to find a resolution.
6. The proposal presents sight distance problems.
7. Parking problems already exist in the area and the proposal would detrimentally impact the neighborhood.
8. Sunday use alone is reported to have a substantial impact on traffic and, as is well-known, most churches are used more often than only on Sundays.
9. Traffic channeled through Backlick Road has an especially adverse impact.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1996.

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The Board recessed at 9:05 p.m. and reconvened at 9:25 p.m.

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8:00 P.M. GESHER JEWISH DAY SCHOOL OF NORTHERN VIRGINIA, SP 95-P-066 Appl. under Sect(s). 3-104 of the Zoning Ordinance to permit a synagogue and related facilities and a private school of general education. Located at 9124 Little River Tnpk. on approx. 4.82 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((1)) 50. (def. from 1/2/96 so P.C. can review)

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and the applicant's agent, Richard Stahl, Esquire, complied.

David Hunter, Staff Coordinator, presented the staff report dated December 19, 1995, outlining staff's position and stating that staff recommended denial of the application. He called the Board's attention to the revised Proposed Development Conditions dated January 23, 1996, submitted to the Board that evening, including 6, 7, 10 and 18 and new Conditions 24, 25 and 26. He said language had been added to Condition 6 regarding the grades of the school which were K through 6; he asked that they delete "at any one time" regarding the number of children in the school. Mr. Hunter went on to explain the various changes which had been made in the revised Proposed Development Conditions.

Mr. Hunter stated that Robin Antonucci of the Office of Transportation was present to address transportation issues and that Steve McGregor from the Planning Division was also present to address land use issues.

Mr. Kelley directed a question to Mr. Hunter and Barbara A. Byron, Director, Zoning Evaluation Division, about a memo dated January 18, 1996, from the Chairman of the Board of Supervisors to James P. Zook, Director, Office of Comprehensive Planning, questioning whether or not the Board of Zoning Appeals (BZA) was the proper forum to hear the application, rather than the Board of Supervisors. He said he had not seen a response to the memo and he asked for comments. Ms. Byron said she was aware of the memo but did not have a copy in front of her. She recalled that a constituent had written to Supervisor Hanley, asking the question of her. Ms. Byron said that the answer was that, because of the fact that one application was for a place of worship and the other was a school for 99 children, they required special permits and were required to be heard by the BZA. She said there is no other forum for those types of applications to be heard in the County.

Mr. Dively asked if staff's recommendation would be different if not for the language in the Comprehensive Plan, Par. 5. Ms. Byron said that language had the greatest influence on staff's opinion. She said that when the Comprehensive Plan said that, when uses such as the YMCA in this planning sector cease to operate, the special permit uses and special exception uses should no longer be approved on the properties and they should become residential uses. Ms. Byron said there are some other minor issues but those were dealt with in the Proposed Development Conditions. She said it was staff's view that, in order for the application to be in conformance with the general standards, particularly the first one that requires harmony with the Comprehensive Plan, a plan amendment would be required, which would go through the Planning Commission. Ms. Byron noted that staff's position had been relayed to the applicant approximately one year previously when staff first met with the applicant.

Mr. Stahl presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record. He said they would comply with the Proposed Development Conditions and be good neighbors. He invited the Mantua neighbors who were in opposition to the application to look at their track record in complying with conditions originally imposed at their present location.

Alan Brick-Turin, President of the Board of Directors of the Geshner School located at 8900 Little River Turnpike in Fairfax, spoke in support of the application. He also spoke as a professional traffic engineer with more than twenty years of experience in evaluating the impacts of land use decisions upon traffic operations. He addressed the transportation issues and described the proposed use of car pools, buses, etc.

The following people also spoke in support of the application: Mary Mallack, one of the three homeowners whose property borders directly onto the subject property; Ken Hockholder, who resides in the middle lot of the three lots that abut the subject property; Alan Frank, Camelot resident, not too far from the subject property and a member of the applicant's synagogue; Sam Kleinman, Mantua resident and a member of

the applicant's synagogue; Brian Fiekma, Lido Place, owner of one house and in the process of purchasing a second house in Mantua; Scott Simpson, Mantua resident; and Bruce Levine, Mantua resident.

Comments in favor were: The proposed use is more favorable than more houses; it would be similar to the previous use and would engender more privacy, open space, the enjoyment of hearing children playing; parking problems would be no worse than usual and preferable to more dwellings; major sites in the area have been converted to institutional use over the years to the betterment of the community; traffic count on Lido Place during rush hour already is 500 cars per hour and the addition of, for instance, a public school would generate more traffic than the proposed use; the nature of the proposed use would enhance the integrity of the community.

Dr. Lenore Kopelovich, Headmaster of Geshher Jewish Day School of Northern Virginia, spoke in support of the application, referencing the First Lady's book entitled, "It Takes a Village to Raise a Child." She went on to describe the benefits to children of the proposed application and said they wanted to be good neighbors.

Mr. Dively questioned whether Floor Area Ratio (FAR) was the same as density. Mr. Hunter said the FAR was the formula used by staff to determine the intensity of a non-residential use. He said density was dwelling units per acre.

The following people spoke in opposition to the application: Sally Ormsby, President of the Mantua Citizens Association (MCA), 9114 Coronado Terrace; Charlotte Hossmaster, 3812 Skyview Lane; Stanley Leroy, 3826 Skyview Lane; Faye Wagoner, 9121 Horner Court; Midge Sharky, 9035 Pixey Court; Hollie Cake, 3805 Skyview Lane; Neil Wagoner, 9121 Horner Court; Lawrence Cavallo, 3908 Skyview Lane; David Foote, 3606 Prince William Drive; Ardith Cavallo, 3908 Skyview Drive; Cindy Bibbs, 9303 Christopher Street; Mary J. Lee, 9207 Briary Lane; L. Clay Beall, III, 3990 Briarbush Way; Carol Cole; William Johnston, 3822 Skyview Lane; Donald Cake, 3805 Skyview Lane; Mary Dick, 383 Skyview Lane; Caroline Leroy, 3826 Skyview Lane; Fran Wallingford; and Vic Lyton, 3906 Lynnbrooke Road.

Among the comments and concerns were: After the contract/purchaser had appeared before the MCA a year ago, the MCA watched the Planning Commission hearing and received a briefing by David Hunter, resulting in a vote of opposition of 69-49; the Comprehensive Plan text states that the subject property should revert to residential use if the present use is discontinued; research and on-site studies by an MCA committee revealed that the proposed use would cause an increase of approximately 50% in the number of vehicles entering Prince William Drive between 8:00 and 8:30 a.m.; most of Mantua has no sidewalks and the already increased traffic volumes already have created a safety problem as has the speed of the vehicles; mitigation measures have been installed and are being reviewed by VDOT; the mitigation measures have produced an actual reduction of about 20%; the property is too small for the proposed use; petitions in opposition were presented and expanded upon; potential organized sports; parking in the neighborhood is already difficult; car pools are not a reality for most churches; the driveways cannot accommodate buses; previous use did not generate traffic during the rush hour; a stormwater pond is located in a soccer field; setting a precedent; the applicant did not respond to questions put to them about parking, installation of signals, etc.; one of the speakers asked those who were opposed to stand and a group of people stood.

Mr. Stahl came forward for rebuttal stating, with respect to the concerns of the neighbors, he believed they had indicated in the application exactly what the use will be. He said they agreed to Condition 23, which explicitly states that the property would not be available for organized soccer leagues, T-ball, etc. Only school-organized activities would take place. He went on to clarify the use as dictated by the Proposed Development Conditions. Mr. Stahl said the School's use of buses and car pools was historical and there was no reason to assume that would not continue.

Mr. Hammack stated that the Board members had that evening received a great deal of material to review, which they could not review while listening to the speakers who had made some good points. He moved to defer decision on the application until the following Tuesday's meeting which is a morning meeting.

Mr. Dively seconded the motion which carried by a vote of 7-0.

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The Board recessed at 11:10 p.m. and reconvened at 11:15 p.m.

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Page 387, January 23, 1996, Tape 2&3, Scheduled Case of:

8:00 P.M. POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, SP 95-M-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities. Locate at 3206 Glenn Carlyn Rd. on approx. 2.25 ac. of land zoned R-3. Mason District Tax Map 51-4 ((8)) A; 61-2 ((5)) 3 & 4. (DEF. FROM 9/12 FOR NOTICES. PLANNING COMMISSION WILL HEAR CASE ON 1/18/96. DEF. FROM 11/14/95 AT APP.'S REQUEST)

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mark G. Jenkins, attorney and agent, complied.

Susan Langdon, Staff Coordinator, presented the staff report dated September 5, 1995, outlining staff's position and stating that staff recommended approval, subject to the Proposed Development Conditions. Ms. Langdon stated that results of a traffic study requested by the BZA was submitted to the Board members in their package. She referenced the Planning Commission's recommendation for denial on January 18, 1996, and said the resolution was also included in the Board's package.

Mr. Jenkins presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record. He submitted photos of the stream channel to the Board.

Marguerite A. Hogge, 3139 Glen Carlyn Road, spoke in support of the application and said that she and her neighbors believed the development would improve the site. She said there is no flooding.

The following people spoke in opposition: Greg Johnson, Hardwich Place Civic Association, 6109 Hardwich Place, who submitted written material and letters of opposition from individuals and associations; Bob Mace, 6109 Brook Drive, President of Lee Boulevard Heights/Lower Munson Hill Civic Association, who submitted photos; Craig Zamuda, 6004 Lebanon Drive, Longbranch Civic Association, who submitted photos; Arnold W. Reitze, 6022 Munson Hill Road, contiguous property owner; Walter Yeikel, 5905 Munson Court, President of Glen Carlyn HOA, consisting of 30 households on property abutting the stream; David Azor, builder of the existing subdivision, originally had an option on the subject land; Christine Dawson, who resides across from the subject property; Susan Glimmer; Sylvia Johnson; Betty Mercoletti; and Jim Nicolacas, Community President of St. Catherine's Greek Orthodox Church, across the street from the proposed use, who was approached by the applicant about a shared parking arrangement, which he turned down because of potential overlapping schedules.

Among the comments and concerns were: The property is zoned residential and is surrounded by single family homes; land use intensity; impact of increased runoff into Longbranch Stream; increased potential for flooding on surrounding properties; environmental impact; defoliation; aquatic impact; applicant's lack of good-neighborliness by violating zoning laws prohibiting use of the property for church and related facilities without the necessary permits; citing of the Planning Commission's finding that the proposed development was not consistent with standards 3, 4 and 7 of Zoning Ordinance Sect. 8-006; other institutional uses already exist in the area.

Mr. Dively asked Mr. Johnson what he meant when he alleged the applicant exhibited a lack of good-neighborliness. Mr. Johnson said that, in most cases, the neighbors were not informed of actions being taken to begin construction of the church on the property.

Other comments and concerns were: The applicant had not met the requirements of the Chesapeake Bay Preservation Act; the Army Corps of Engineers believed a site survey was necessary and it was scheduled for that month; insufficient parking available and proposed; no sidewalks/hazardous for children; inadequate screening; adverse audio and visual environmental impacts; property is too small for the intended use; unauthorized church services and/or meetings already are causing parking problems; the builder of the existing development was present and said that he originally was not allowed to build on the subject property because of the floodplain and released his option on the property; existing and anticipated property deterioration, trash, loud ball games, yard sales, shelter of some sort, vans bringing and picking up groups of people, plans for week-day child center; the Mosque impact will be compounded.

Mr. Jenkins came forward to rebut. He said Ivan Vargas, Chairman of the Building Committee, approached the Greek Orthodox Church to discuss shared parking, at the suggestion of various citizens, in the event of overflow parking which they did not anticipate. He explained the waiver of the Chesapeake Bay Preservation Act in an attempt to alleviate the concerns expressed by neighbors; he expressed concern about the constant comparisons to the Mosque and denied any similarity in the uses; said there had been no application for a child care center; he stated that the traffic report was based on actual counts and VDOT criteria, establishing that there was no conflict with the adjacent road system at peak hour.

Chairman DiGiulian asked Mr. Jenkins if the church had held services since the Notice of Violation and Mr. Jenkins said it was his understanding that they may have met there once and then gone somewhere else, but that they had not held services.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SP 95-M-034 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-034 by POTOMAC CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS, under Section 3-303 of the Zoning Ordinance to permit a church and related facilities, on property located at 3206 Glenn Carlyn Road, Tax Map Reference 51-4((8))A; 61-2((5))3 and 4, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 2.25 acres.
4. There is not enough land to accommodate the use, thereby creating an intensity issue.
5. The property may or may not be in a floodplain; however, drainage problems do exist.
6. The issue raised that the applicant did not practice a good neighbor policy was not necessarily supported by testimony.
7. The Board generally agreed with the Planning Commission's conclusions.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Dively seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1996.

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Page 389, January 23, 1996, Tape 3, Action Item:

Request for Reconsideration
Khosro and Cheryl Farahani, VC 95-D-121

Mr. Ribble moved to deny reconsideration. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 389, January 23, 1996, Tape 3, Action Item:

Approval of Resolutions from the January 16, 1996 hearing.

Mr. Ribble noted an error in one resolution which he asked to have corrected. Mr. Dively moved to approve with that change. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 389, January 23, 1996, Tape 3, Action Item:

Request for Intent-to-Defer
Voyten and Associates Appeal 95-S-060
Suggested date: Match 5, 1996

Mr. Pammel commented that granting requests for deferrals potentially resulted in prolonged meetings, such as the Board had faced that evening. Chairman DiGiulian said that he did not anticipate future problems of that kind because staff had agreed to keep them posted. Jane C. Kelsey, Chief, Special Permit and Variance Branch, checked the agendas and advised that the Board had seven cases scheduled for March 5. The Board moved to grant the request.

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Page 389, January 23, 1996, Tape 1, Action Item:

Approval of Revised Plat
Potomac Custom Builders, VC 95-D-101

The Board moved to approve the revised plat.


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Page 390, January 23, 1996, Tape 1&2, ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 12:20 a.m.

Minutes by: Geri B. Bepko

Approved on: March 19, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 30, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 391, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. GESHER JEWISH DAY SCHOOL OF NORTHERN VIRGINIA, SP 95-P-066 Appl. under Sect(s). 3-104 of the Zoning Ordinance to permit a synagogue and related facilities and a private school of general education. Located at 9124 Little River Tnpk. on approx. 4.82 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((1)) 50. (DEF. FROM 1/2/96 SO PLANNING COMMISSION COULD REVIEW. DEF. FROM 1/23/96 FOR DECISION ONLY. NO ADDITIONAL TESTIMONY)

Chairman DiGiulian noted that this application had been deferred from the January 23rd public hearing for decision only.

Mr. Hammack made a motion to grant SP 95-P-066 for the reasons noted in the Resolution and subject to the Revised Proposed Development Conditions dated January 23, 1996.

Mr. Kelley questioned the feasibility of adding a condition requiring that the application be reviewed by the Board of Zoning Appeals after two years. Mr. Hammack said he had considered that option but that he did not believe it would be feasible considering the amount of money the applicant will have to invest in the site. Mr. Kelley said although the applicant had indicated that the use was temporary on the site, he was hesitate to accept that statement. Mr. Hammack said he would not oppose adding a condition requiring that the traffic and parking be reviewed after a period of time. Mr. Ribble said he believed that if there is a traffic problem over the next two years the Board would be made aware of it and that he did not believe such a condition was necessary.

Mr. Pammel believed the use was appropriate and concurred with almost every point that the maker made in his motion as well as the neighbor's comments regarding the open space; however, he believed this request dealt with a policy decision that has to be made the Board of Supervisors. He pointed out that it is the Board of Supervisors who voted to include the language in the Comprehensive Plan that exists today stating that upon the termination of the Y.M.C.A. that the use revert to single-family uses. When considering all the facts, Mr. Pammel believed that the BZA was bound by policy established by the Board of Supervisors and this issue and final outcome is under the jurisdiction of that body.

NOTE: Mr. Hammack revised the Resolution at the Board of Zoning Appeals meeting on January 30th to include additional findings of facts. These are incorporated into the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-P-066 by GESHER JEWISH DAY SCHOOL OF NORTHERN VIRGINIA, under Section 3-104 of the Zoning Ordinance to permit a synagogue and related facilities and a private school of general education, on property located at 9124 Little River Turnpike, Tax Map Reference 58-4((1))50, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.82 acres.
4. This application gave the BZA trouble because of the unusual language in the Comprehensive Plan which was a threshold issue that had to be surmounted before you could get to the merits. After reading many provisions of the State Code and the Zoning Ordinance and it appears that the Comprehensive Plan is general in nature to give guidance, but the Code and the Ordinance clearly vests the BZA with the authority to grant special permit uses in any given zoning district. To the extent that the County Board of Supervisors has delegated the authority to the BZA to act on those applications, the BZA has a responsibility to act in accordance with the application that is presented and look at each application on the facts. In this particular application, the staff report found that the applicant met every required standard but the one dealing with the conformance of the Master Plan. After reviewing the application, it appears that staff's interpretation is too narrow a construction of the Plan. A school of general education is permitted under the Ordinance in a R-1 District. The Comprehensive Plan cannot really override the Zoning Ordinance in what is permitted in a zoning district. There is a lot of opposition to the school and there is also some support for the school. The BZA chose not to speculate as to what the Planning Commission was thinking in 1991 when it changed the Plan and what might have been behind the change. Staff was requested to make a list of the special permit uses the Planning Commission said should be terminated or returned to residential use in the event the present use ceased to operate. The list included the Mantua Swim and Tennis Club, the Strathmeade Square Swim and Tennis Club, all the churches, the Fairfax County Pumping Station, the Fire Department facility, everything in the F-2 Planning Sector. The BZA does not know why the Planning Commission believed these uses were not appropriate in residential neighborhoods since they have been there and support the residential neighborhood. One area that the community testified to that the BZA is concerned with, is traffic. Mantua does have a traffic problem, especially at the entrance that will be used by the proposed use which is a main entrance into the community. The hours of operation of the proposed use will be outside the peak hours of traffic as has been determined by the community. That is one reason that the use should be granted. There was concern with the synagogue part of the application. The applicant testified that there might be some religious services that would meet prior to school starting and there was concern that there might be conflicting traffic movements associated with the use of the synagogue and the use of the school to the extent that car pools or individuals bringing their children to school might be faced with conflicting movements by people leaving a 8:00 a.m. service. It does not seem feasible that there could be an 8:00 a.m. service and everyone could get in and out before 8:30 a.m. in order to open up the parking lot for the school use; therefore, the development conditions were tightened up to address this problem. In staff's opinion, the use associated with the school and synagogue is less intense than the use associated with the Y.M.C.A., and the maker of the motion agreed with staff on that point. Schools are an important part of the community. They are the focus around which a community is often times built. Mantua has fought to keep its elementary school and to have it improved to attract new families. A school of this type would also be an attraction to new families and is entirely consistent with a residential neighborhood. There has been some criticism to the size of the site compared to an elementary school. That may be true, but most elementary schools have considerably more than 99 students associated with the use. The site is well sited to accommodate a school, being on Route 236, which is going to be widened to six lanes. It has frontage on two streets, one is Prince William which is two lanes and can accommodate traffic into and out of the parking lot. The Skyview Lane side of the school will have a fence around it. There will no organized soccer league play allowed on the site as stipulated in the development conditions. The BZA gets a lot of opposition to schools in neighborhoods, or any use in neighborhoods, but particularly to uses that are internal to the neighborhood. If this school was being proposed on a site such as that occupied by the Mantua Swim and Tennis Club, it might be a different result. But it is on the very edge of the community, and it will not be attracting any

traffic or what traffic it does attract will be minimal and it meets the standards for those reasons. People like to argue over what all these words are; but, the development conditions or other standards that apply talk about the use being in harmony with the Plan. In returning a special use to a residential use under our Ordinance, where we have by definition, a school is in harmony with a residential use and the proposed use by the Gesher School is in harmony with the Plan. The staff's analysis talks about it being in conformance, which is a narrower standard to some extent, and the school itself was in harmony with the requirement and the Plan to maintain what would be considered a residential use. Also, in preparing my motion and the BZA is not saying that this is a controlling case, but there is a case cited in the footnotes to the Virginia Code, the Rowe case that talks about equal protection of applicants within a zoning district. The BZA cannot discriminate in uses that would be applied to them and that case provided some guidance on how this case ought to be approached, because it said a denial of those rights was a denial of equal protection and a taking. Insofar as the Plan itself is suppose to be general in nature and the proposed language in this instance is very specific with respect to a specific piece of property that the BZA is dealing with, sort of a what in law is sometimes called a prior restraint or something, but it is an attempt to zone through the use of the Plan and the Plan is to be used only as a guide.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Tri-Tek Engineering dated July 5, 1995 revised through January 17, 1996 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment for the school of general education and the summer camp shall not exceed a total of 99 students. The school of general education may include grades kindergarten through eighth grade. The operation of the school of general education and the summer camp shall not overlap. There shall be a maximum of eight (8) teachers and three (3) staff associated with such uses.
6. The maximum hours of operation for the private school of general education and the summer camp shall be from 8:30 a.m. to 3:30 p.m., Monday through Friday. Use of the facility for aftercare shall be limited to the summer camp and may extend until 4:30 p.m. Weekend and evening use of the facilities for extracurricular activities shall be permitted on a limited basis provided there is no adverse impact on the surrounding community.
7. The number of students using the outdoor recreation area at any one time shall not exceed the square foot requirements for the recreation areas stipulated by Zoning Ordinance Sect. 8-307

which require 200 square feet per child in grades Kindergarten through 3 and 430 square feet per student in grades 4 through 12.

8. Indoor recreation space shall be provided in accordance with the provisions of Chapter 30 of the Code.
9. The maximum number of seats in the main area of worship for the synagogue shall be 125. There may be one employee or rabbi associated with the use of the synagogue. Except for the use of an office by the rabbi, the use of the facility as a synagogue shall not overlap or conflict with the use of the property as a school or summer camp including the parking requirements of the school.
10. Approval of this special permit does not constitute a reduction in the number of required parking spaces. The number of parking spaces provided shall satisfy the minimum requirements set forth in Article 11 of the Zoning Ordinance unless a shared parking agreement between the synagogue and the Gesher School is approved by the Board of Supervisors. A maximum of thirty-two (32) parking spaces shall be provided on site as shown on the special permit plat provided a shared parking agreement shall be requested from and approved by the Board of Supervisors. If approval of a shared parking agreement is not obtained, an amendment to the special permit shall be required in order to allow additional parking spaces on site above the maximum number of spaces shown on the plat, which is thirty-six (36). This number includes the additional parking as shown in the dashed lines on the special permit plat. Alternatively, the number of seats in the synagogue and/or the maximum daily enrollment of the school shall be reduced accordingly and parking sufficient to meet the minimum Zoning Ordinance requirement for the school and the synagogue shall be provided as determined by DEM based on the requirements of the Zoning Ordinance. The use of the facility as a synagogue shall not be implemented until the shared parking agreement is obtained from the Board of Supervisors or the parking requirements associated with the synagogue use are satisfied. All parking shall be on site. If actual use of the facility results in the inadequacy of parking on site, the applicant shall implement measures, such as buses, van pools or car pools to bring the use into compliance with this condition.
11. Construction of a third westbound lane along Route 236 shall be provided for public street purposes as approved by the Director, DEM. Said lane shall be striped as a right turn deceleration lane. A concrete sidewalk shall be provided along Route 236 as approved by the Director, DEM.
12. All access to the subject property shall be from Prince William Drive. The entrance shall be designated "Entrance Only" and the exit shall be designated "Exit Only" and appropriate signage shall be installed accordingly. The entrance and exit shall be provided in accordance with the Virginia Department of Transportation (VDOT) standards. The existing curb cut located on Skyview Lane shall be closed.
13. Prior to site plan approval, and as may be required by VDOT, the applicant shall provide a queuing analysis in order to assess the adequacy of the existing left turn lane eastbound on Route 236. If it is determined that the existing left turn lane is inadequate, then the applicant shall commit to decrease the number of peak hour trips to the site by use of increased bus transportation or car pools.
14. Transitional Screening and Barriers shall be modified and shall be provided as follows:
 - Northern lot line: the existing vegetation as shown on the special permit plat shall be maintained and shall satisfy the transitional screening requirement. A row of evergreen trees shall be provided as shown on the special permit plat in order to supplement the existing vegetation. A six-foot high board-on-board fence shall be provided along the edge of the transitional screening yard adjacent to Lot 38 as depicted on the special permit plat.

- Eastern line lot line: a six foot high chain link fence shall be provided along the eastern property line as shown on the special permit plat. A row of evergreen trees shall be planted between the chain link fence and the lot line.
 - Western lot line adjacent to Prince William Drive: the existing vegetation as shown on the special permit plat shall be maintained and shall satisfy the transitional screening requirement. The barrier requirement shall be waived.
 - Southern lot line: the existing vegetation shall be maintained and supplemental evergreen plantings shall be provided which will screen the parking, pool and tennis court area. The barrier shall be modified to allow the existing fences to remain.
 - All plantings shall be of a size, type and species as determined by the Urban Forestry Branch, Department of Environmental Management (DEM).
15. Landscaping and building foundation plantings shall be provided around the proposed structure in order to enhance the visual appearance of the building. The landscaping and the foundation plantings shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval.
16. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-201 and 13-202 of the Zoning Ordinance.
17. The limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch at the time of site plan approval. Definitive limits of clearing and grading which emphasize the preservation of mature trees and the existing vegetation especially along all property lines shall be provided. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utility lines, trails, etc., that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternative location on the site. If a suitable alternative location cannot be identified on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public Facilities Manual (PFM).
18. Best Management Practices shall be provided to the satisfaction of the Director, Department of Environmental Management (DEM). If on-site stormwater management facilities are required, such facilities shall be located in the northeast corner of the site, and shall not encroach into the required transitional screening yards.
19. Any proposed lighting of the parking areas shall be in accordance with the following:
- The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
20. The maximum Floor Area Ratio for the proposed structure shall not exceed 0.06. The maximum building height shall not exceed 36.5 feet.
21. There shall be no pole-mounted signs associated with this use. Building mounted and freestanding signs shall be permitted in accordance with Article 12, Signs.
22. Any trash dumpster located on the property shall be screened by a board-on-board fence, or with plantings which shall completely screen the view of the dumpsters, subject to the approval of DEM.

23. The pool, tennis courts and ballfields shall be used by the school of general education and synagogue and shall not be open for organized community use without amendment of this special permit.
24. There shall be no overlap of activities between the school of general education and the scheduled religious services of the synagogue.
25. This special permit for the synagogue is granted to the applicant and the lessee as indicated in the statement of justification. A change in permittee approved by the Board of Zoning Appeals shall be obtained in order for another lessee to utilize the site for a place of worship.
26. The Y.M.C.A. shall cease to operate before the Non-Residential Use Permit for this use is approved.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-2. Mr. McPherson and Mr. Pammel voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 396, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BRENDAN P. & CHRISTINA A. KENNEDY, VC 95-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from front lot line. Located at 7409 Windy Hill Ct. on approx. 16,547 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 30-1 ((26)) 5. (DEF. FROM 9/26/95 AT APPLICANT'S REQUEST. DEF. FROM 12/5/95 FOR NOTICES)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the notice requirement has once again not been met. She noted that staff has no objections to the deferral and suggested March 12th at 9:00 a.m. Mr. Dively asked if a continuation had been requested and if the notices had not been done or if they were done improperly. Ms. Kelsey said the notices were done improperly. Mr. Dively made a motion to defer the application to the date and time suggested by staff. Hearing no objection, the Chair so ordered.

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Page 396, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. T. CHRISTOPHER MOSS & RUTH G. THOMSON, VC 95-V-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 1.7 ft. and eave 1.4 ft. from side lot line. Located at 8326 Stockade Dr. on approx. 11,173 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((15)) 55.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Christopher Moss, 8326 Stockade Drive, Alexandria, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 5.3 feet for the carport and a variance of 7.6 feet for the eave.

Mr. Moss explained they would have gone with a 12 foot wide carport, but the fireplace chimney extends out 2 feet which necessitated the need for the additional footage. He said that the addition would be in keeping with the character of the neighborhood, the lot has an odd shape, and the storm sewer easement dictated where the addition must be located.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny VC 95-V-128 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-128 by T. CHRISTOPHER MOSS & RUTH G. THOMSON, under Section 18-401 of the Zoning Ordinance to permit construction of carport 1.7 feet and eave 1.4 feet from side lot line, on property located at 8326 Stockade Drive, Tax Map Reference 102-3((15))55, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,173 square feet.
4. Although the applicant has presented testimony that the lot is an unusual configuration, which is true to some extent, the Board cannot support improvements this close to the side lot line.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Dively seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996.

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Page 398, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH E. ROBERT, JR., VC 95-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear lot line. Located at 1175 Dolley Madison Blvd. on approx. 2.02 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 1K.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy L. Steele, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was. She noted the applicant acts as the sole beneficiary of a trust that holds the property and the trustee is G. David Fensterheim.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 18 feet in order to construct a tennis structure. Ms. Kelsey said architectural drawings were submitted to staff after the publication of the staff report but were included as part of the package submitted to the BZA last week. She noted that the tennis courts do not require variance approval and are currently being constructed under an approved grading plan.

Ms. Steele said the applicant had considered the possibility of consolidating the subject property with three abutting parcels to the rear for which he acts as the sole beneficiary of a trust. She said this consolidation would have required a dedication of 20 percent open space of the gross area of the property being consolidated and proceeded to address each of the nine required variance standards. Ms. Steele said the layout of the existing structures does not allow the tennis shelter to be moved to the western side of the tennis court and the required 10 foot retaining wall precludes locating it to the other side. She said the drawings submitted demonstrated that the design and materials used for the proposed tennis shelter will

be of the highest quality and the proposed tennis shelter will be of no detriment to adjoining property values. Ms. Steele said the applicant offered to meet with any concerned individuals and has received letters of support from the owners of the parcels closest to the lot line from which this variance is requested. She concluded by introducing Peter R. Crowley with Land Design; Mr. Tarley, the special project manager; and Art Walsh, a senior member of the law firm.

Mr. Pammel asked if Lots 24, 25A, and 26 were improved with residential structures. Ms. Steele replied Lots 24 and 25A are comprised of a driveway leading up to Lot 26, which is developed with a residential structure. She added there are two houses on the subject property.

A discussion took place between the BZA and Mr. Crowley as to why the proposed structure could not be relocated to reduce the size of the variance. The speaker said the structure could be moved further from the lot line but they preferred the proposed location because of the layout of the lot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to deny VC 95-D-125 for the reasons noted in the Resolution.

Mr. Dively supported the motion as he believed the granting of a variance would be for convenience based on the testimony that the structure could be moved further from the lot line.

Mr. Kelley made a motion to waive the 12-month time limitation for filing a new application. Mr. McPherson seconded the motion which carried by a vote of 7-0.

NOTE: The Board of Zoning Appeals reconsidered its decision on February 6, 1996 and scheduled a reconsideration public hearing.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-125 by JOSEPH E. ROBERT, JR., under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 feet from rear lot line, on property located at 1175 Dolley Madison Boulevard, Tax Map Reference 31-1((1))1K, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.02 acres.
4. There are some topographical problems for the portion of the property that the applicant is looking at, but do believe that they have looked at the whole lot.
5. There are other possible locations for the construction.
6. The granting of the variance would be for convenience since the applicant's own witness testified that the structure could be moved further away from the lot line.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. The Board waived the 12-month time limitation for the filing of a new application.

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Page 400, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MR. & MRS. ALEX SMITH, VC 95-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and permit 6.2 ft. high fence to remain in a front yard. Located at 1312 Round Oak Ct. on approx. 13,785 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-2 ((19)) 50.

Since the applicant was not present in the Board Auditorium, the Board of Zoning Appeals passed over the case to allow staff an opportunity to contact the applicant.

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Page 401, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN R. SOLOMON, VC 95-V-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.5 ft. from side lot line. Located at 2006 Shenandoah Rd. on approx. 10,451 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((9)) (13) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marvin R. Solomon, 2006 Shenandoah Road, Alexandria, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 4.5 feet in order to construct a detached garage and workshop. On May 14, 1994, the BZA denied a variance request on the subject property for a similar garage which was 5 feet wider and 1.5 feet higher than the current proposal. A copy of the minutes, resolution, and plat which was associated with that application was contained in Appendix 4 of the staff report. Ms. Kelsey said the existing shed which is located 6 feet from the rear lot line was constructed in the 1950's and met the yard requirements at that time. Staff has concluded from conversations with the applicant this shed will remain, but the shed in the location of the proposed structure will be removed.

Mr. Solomon referenced the statement of justification submitted with the application and said he believed the variance was minimal. He said the shed which would be removed is where garage is proposed.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 95-V-126 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 23, 1996. Following a discussion among the BZA members and the applicant as to which shed the applicant was proposing to remove, Mr. Kelley deleted Condition Number 4.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-126 by MARVIN R. SOLOMON, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.5 feet from side lot line, on property located at 2006 Shenandoah Road, Tax Map Reference 102-1((9))(13)19, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,451 square feet.
4. The applicant has reduced the size of the garage since the previous variance request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific accessory structure shown on the plat prepared by Russell C. Seward Construction Co./Gaver Nichols Architect, dated March 30, 1992, revised through May 6, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit, if required, shall be obtained prior to any construction and final inspections shall be approved.
- 3. The structure shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 403, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH J. TEDINO, VC 95-V-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from side lot line and stoop 5.9 ft. from side lot line. Located at 1302 Warrington Pl. on approx. 14,333 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (1) 3. (MOVED FROM 1/16/96 AT APPL'S. REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph J. Tedino, 1302 Warrington Place, Alexandria, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 2.1 feet to the addition and a variance of 1.1 feet for the stoop. Ms. Kelsey said additional research by Ron Derrickson, Planning Technician, subsequent to the publication of the staff report, indicated that the property across the street referenced in the applicant's statement of justification did not need a variance for the construction of the garage.

Mr. Tedino presented the statement of justification submitted with the application. He said they had investigated the possibility of converting the existing carport into a garage and found that the rear of the structure meets the setback requirements but the front does not due to the way is sited on the pie shaped lot. Mr. Tedino said there are no objections from the neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 95-V-120 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-120 by JOSEPH J. TEDINO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.9 feet from side lot line and stoop 5.9 feet from side lot line, on property located at 1302 Warrington Place, Tax Map Reference 93-4((4))(1)3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,333 square feet.
4. The applicant has indeed met the nine required standards for the granting of a variance.
5. Both the applicant's statement of justification and testimony given at the public hearing cite the narrowness of the lot which has converging lot lines which necessitates the need for a variance for one corner of the addition.
6. The applicant also cited topographical problems on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

That the subject property has at least one of the following characteristics:

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition and stoop shown on the plat prepared by Alexandria Surveys, Inc., dated September 26, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JAMES C. ROBERTS, VC 95-D-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 24.4 ft. Located at 925 Cup Leaf Holly Ct. on approx. 20,038 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 6-1 ((7)) 70. (DEF. FROM 11/14/95 FOR NOTICES. DEF. FROM 1/2/96 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James C. Roberts, 925 Cup Leaf Holly Court, Great Falls, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and its addendum dated January 23, 1996. He said during the January 2nd public hearing it was determined that the application was incorrectly advertised because the variance for the total side yards had been omitted. Mr. Hunter said the applicant was requesting a variance of 14.0 feet to the minimum side yard requirement for the construction of a study/guest room and a variance of 15.6 feet to the total side yards.

Mr. Roberts said he would like to construct a 15 foot wide study on the side of the house which would also serve as a guest room with a bathroom and storage room. He said the previous study was converted into a bedroom to accommodate one of his four children. Mr. Roberts said the lot is narrow, the house sits back on the lot, there is a swimming pool in the rear yard, and there are no objections from the neighbors.

In response to a question from Mr. Hammack, Mr. Roberts said the house on Lot 69 sits forward on the lot and noted that the property owner supports the request.

Mr. Dively questioned the location of the swimming pool. Mr. Hunter said the engineer failed to denote the out parcel between the subject project and Holly Knoll Drive on the plat and noted that the swimming pool is not located in a front yard, thus the issue is moot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant VC 95-D-103 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 9, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-103 by JAMES C. ROBERTS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.0 feet from side lot line such that side yards total 24.4 feet, on property located at 925 Cup Leaf Holly Court, Tax Map Reference 6-1((7))70, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is 20,038 square feet.
4. The Board of Zoning Appeals granted a variance to the owners of Lots 48 and 58 for construction 4.3 feet from the side lot line.

5. The lot is long and narrow.
6. The request is minimal and the dwelling on Lot 69 is set forward on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific study addition shown on the plat prepared by Rice Associates, P.C. dated July 25, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 401, January 30, 1996, (Tape 1), JAMES C. ROBERTS, VC 95-D-103, continued from Page 406

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 401, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. OBDULIA AURORA LADISA, VC 95-Y-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six foot high fence to remain in the front yard of a corner lot. Located at 5522 Willow Valley Rd. on approx. 15,902 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-3 ((6)) 1. (MOVED FROM 9/26 AT APP.'S REQ. DEF. FROM 12/12/95 FOR NOTICES)

David Hunter, Staff Coordinator, informed the Board of Zoning Appeals that the notice requirement had not been met and noted that the applicant is currently under violation. Mr. Dively made a motion to dismiss the application for lack of interest. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 401, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BOARD OF TRUSTEES OF SOUTH RUN BAPTIST CHURCH, SPA 87-S-078-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 87-S-078 for church and related facilities to permit nursery school, site modifications and existing amphitheater to remain. Located at 8712 Selger Dr. on approx. 10.59 ac. of land zoned R-1. Springfield District. Tax Map 89-3 ((3)) 2 and 3. (MOVED FROM 12/19/95 DUE TO BZA HEARING BEING CANCELED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Glenn Ball, trustee for the church, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report said staff recommended approval of the application. She said staff received no letters regarding the application.

Mr. Pammel asked if it was correct that the amphitheater was built contrary to the approved special permit. Ms. Stagg said that correct. She explained that a proposed amphitheater was shown on the former application outside the Environmental Quality Corridor (EQC), but when it was constructed it was further into the EQC in an area that was already cleared for a sanitary sewer.

Mr. Ball said the church would like to add a nursery school in the basement of the sanctuary and the only visible changes to the outside of the church will be the fence required for the play area. He said this will fill a need in the community and the existing parking will be more than adequate for the school. Mr. Ball explained that when the sanitary and storm sewers were constructed during Phase 1 the area where the amphitheater is located was cleared; the church was unaware of any conflict until it was discovered during this special permit process. He said the church would like to install the security gate to prohibit vehicles from coming onto the church property during the times when the church is not meeting.

In response to a question from Mr. Hammack, Mr. Ball said the church agreed to all the development conditions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 87-S-078-2 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 5, 1995.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-078-2 by BOARD OF TRUSTEES OF SOUTH RUN BAPTIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 87-S-078 for church and related facilities to permit nursery school, site modifications and existing amphitheater to remain, on property located at 8712 Selger Drive, Tax Map Reference 89-3((3))2 and 3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1996 ; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 10.59 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Glenn Ball, Jr. for Holland Engineering dated 10/31/95 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The maximum number of sanctuary seats in Phases 1 through 4 shall be six hundred (600).*
6. The maximum daily enrollment of the nursery school per day shall not exceed ninety-nine (99).
7. A minimum of 100 square feet of usable outdoor recreational area shall be provided for each nursery school student using the area at any given time.

8. Hours of nursery school operation shall not commence prior to 9:00 a.m. nor extend past 3:00 p.m., Monday through Friday.
9. A maximum of two hundred forty five (245) parking spaces shall be provided at the completion of all four phases. A minimum of one hundred fifty (150) parking spaces shall be provided at the completion of Phases 1 and 2. A minimum of one hundred sixty nine (169) parking spaces shall be provided at the completion of Phases 3 and 4. * Nineteen (19) parking spaces, located in close proximity to the nursery school entrance, shall be designated for the drop-off and pick-up of students. Required parking spaces shall be provided in conjunction with associated phased building construction. All parking shall be located on-site.
10. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.
11. Any existing and proposed lighting of the parking area shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve feet.*
 - The lights shall be focused directly onto the subject property.*
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.*
12. The barrier requirement, a six foot board fence, shall be maintained along the western lot line in its current position interior to the transitional screening area. The barrier requirement shall be waived in all other areas.*
13. Transitional Screening 1 shall be maintained along the western property line. The existing vegetation shall be considered sufficient to satisfy the transitional screening requirements for the east and south property lines provided it is left undisturbed in accordance with Conditions 16 and 17 below.*
14. The clearing and grading line designated on the approved plat shall include all land which is defined by the Comprehensive Plan as Environmental Quality Corridor (EQC).*
15. There shall be no structures located within the Environmental Quality Corridor*, with the exception of an amphitheater, as shown on the plat, and those structures listed in Condition 17.
16. There shall be no clearing of any vegetation within the Environmental Quality Corridor, except for dead or dying trees and shrubs*, and the removal of vegetation required to keep the amphitheater from becoming overgrown.
17. No grading shall be allowed within the Environmental Quality Corridor with the exception of improvements determined necessary by DEM for the road, driveway, storm water detention area and sanitary sewer lines if the EQC is the only feasible area where they can be placed. Minor alterations shall be permitted to accommodate engineering or other code required changes deemed necessary by DEM or the Urban Forester.*
18. The storm water management facility shall continue to be located in the area designated as Phase 4 on the plat and shall be maintained by the applicant. The applicant shall allow access and inspection by the appropriate County agencies.*
19. If a regional storm water management facility is allowed to be constructed, the applicant may abandon its facility in the area designated as Phase 4 on the plat. If constructed, this facility shall accommodate all uncontrolled upstream drainage as well as the drainage from this property, be located in the area shown on the plat, and maintained by the County.*

20. If a regional storm water management facility is allowed to be constructed, a wetlands study shall be conducted by the applicant and provided to the Director of DEM. The study shall determine the limits of any wetlands located on the site and how much of the wetlands, if any, will be disturbed by the regional storm water management facility and its associated access easement. If required, the applicant shall obtain the appropriate Army Corps of Engineer Permits prior to site plan approval. If the wetlands study reveals that a site redesign is necessary, a Special Permit Amendment shall be required prior to the approval of the site plan by DEM.*
21. The storm water management facilities shall be designed as Best Management Practices (BMP) as determined by the Director of DEM.*
22. These conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

* Denotes previously approved conditions.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 410, January 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BARCROFT BIBLE CHURCH, SPA 88-A-107 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-A-107 for church and related facilities to permit increase in parking spaces. Located at 4000 Pickett Rd. on approx. 15.26 ac. of land zoned R-1. Braddock District. Tax Map 58-3 ((1)) 2A. (MOVED FROM 12/19/95 DUE TO BZA HEARING BEING CANCELLED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Sara Hall, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the applicant was requesting an increase in parking from 131 parking spaces to 351 parking spaces which is an increase of 221. Ms. Langdon said the revised plat dated thru December 8, 1995, depicts the proposed parking to be constructed in three phases and she proceeded to discuss the three phases. She said staff recommended approval of the application subject to the revised Proposed Development Conditions dated January 29, 1996.

Ms. Hall said the church was built in 1992 and held the first services in January 1993 and they take it as a very good sign that there is a need for more parking. She believed all of staff's concerns have been met and stated that the applicant agrees with all the development conditions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 88-A-107 for the reasons noted in the Resolution and subject to the Revised Development Conditions dated January 29, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 88-A-107 by BARCROFT BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to permit amend SP 88-A-107 for church and related facilities to permit increase in parking spaces, on property located at 4000 Pickett Road, Tax Map Reference 58-3((1))2A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 15.26 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, Incorporated, dated August 8, 1995, revised December 8, 1995 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The maximum seating capacity for the church shall be limited to a total of 468 seats.*

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 351 spaces. All parking shall be on site as shown on the special permit plat.
7. The plantings within the existing thirty-five (35') foot transitional screening strip provided along the southern and eastern lot lines shall be reviewed by the Urban Forestry Branch, DEM at the time of site plan review and supplemental vegetation shall be planted to screen the residential area from vehicles and head-light glare if determined necessary by the Urban Forestry Branch. Size, number and variety of plant material shall be as determined by the Urban Forestry Branch.

The plantings within the existing twenty-five foot (25') screening strip along the northern lot line shall be reviewed and any dead, dying or hazardous trees shall be replaced if necessary as determined by the Urban Forestry Branch. This vegetation shall be maintained in order to soften the visual impact of this use and to retain the residential character of the site.

Barrier F may be provided along the southern lot line and along the portion of the eastern lot line which is adjacent to residential properties.

Barrier H shall be maintained along that portion of the eastern lot line that abuts the adjacent special permit use (Calvary Hill Baptist Church). The existing vegetation along this lot line may be used to satisfy this barrier requirement in whole or in part and any dead, dying or hazardous trees shall be replaced as determined by the Urban Forestry Branch.

The barrier requirement along the northern lot line shall be waived.*

8. An on-site stormwater management facility shall be provided so that post development peak flow is 50% of pre-development peak flow. The two existing on-site ponds may be used to satisfy this requirement, if they are enhanced to provide for extended detention of stormwater runoff from the site. A dam integrity study shall be provided if required by the Department of Environmental Management (DEM) to ensure the safety and suitability of using the existing ponds for stormwater management. All stormwater management facilities shall meet requirements as determined by DEM and the applicant shall provide access and maintenance easements to the County. Any wetlands damaged during construction of the stormwater management facility shall be reestablished.*
9. Parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.* Interior parking lot islands shall be reasonably dispersed throughout the parking lots.
10. A tree preservation plan showing the limits of clearing and grading and the areas of trees to be saved shall be submitted to the Department of Environmental Management for review and approval prior to the commencement of any site clearing. This plan shall demonstrate preservation of as much existing vegetation as possible.*
11. Any proposed lighting of the parking areas shall be in accordance with the following:
 - ° The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - ° The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
 - ° Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.*
12. The proposed Phase I parking lot shall be connected to the existing parking lot. Ingress and egress shall be via the existing driveway from Pickett Road.

Once construction has commenced on the Phase II parking lot, a driveway may be provided to Little River Turnpike (Route 236). This driveway shall be designated for right-in and right-out turns only.

Once construction has commenced on the Phase III parking lot, the applicant must construct a deceleration lane for the entrance from Route 236 to continue right-in turns. If a deceleration lane is not provided, the entrance to Route 236 must be reconfigured and designated as a right-out only turn. The driveway shall be located as shown on the special permit plat. The specifications of the deceleration lane shall be as determined by DEM and VDOT at the time of site plat review.

All parking areas shall be connected to the rear of the church as shown on the special permit plat so as to provide access from Pickett Road.

13. Pedestrian crosswalks and sidewalks shall be provided to the satisfaction of DEM to afford safe access from the parking lots to the church building.
14. The foundation plantings located around the church to soften the visual impact of the structure shall be maintained in a healthy condition. Size, type and location of any replacement plantings shall be as determined by the Urban Forestry Branch, DEM.*

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Establishment of Phase 1 parking shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 413, January 30, 1996, (Tape 1), Scheduled case of:

9:30 A.M. MARITA WILLOUGHBY, APPEAL 95-S-066 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that two barns/stables have been constructed on appellant's property closer to side lot line than permitted under Zoning Ordinance provisions. Located at 13310 Compton Rd. on approx. 5.70 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24.

A discussion took place between the BZA and staff as to the number of cases scheduled for the suggested date of March 26, 1996. Jane Kelsey, Chief, Special Permit and Variance Branch, said there were a total of seven cases and with the addition of A 95-S-066 there would be three appeals. William Shoup, Deputy Zoning Administrator, said one of the appeals would probably be dismissed since the appellant has now received site plan approval and was proceeding with the construction.

Page 414, January 30, 1996, (Tape 1), MARITA WILLOUGHBY, APPEAL 95-S-066, continued from Page 413

Mr. Dively believed one continuation would be appropriate and moved to defer the appeal to March 26, 1996. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 414, January 30, 1996, (Tape 2), Scheduled case of:

9:30 A.M. DANIEL T. HORSEMAN, APPEAL 95-S-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining outdoor storage in excess of 100 sq. ft. in area, that such storage is deemed to be a storage yard and a junk yard, is parking two dump trucks and other construction equipment on the subject property in violation and of Zoning Ordinance provisions. Located at 12612 Harper Dr. on approx. 23,069 sq. ft. of land zoned R-C. Springfield District. Tax Map 66-4 ((4)) 40. (DEF. FROM 12/5/95 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, said staff was recommending that the appeal be dismissed since the appellant failed to meet the notice requirement for the December 5, 1995, public hearing and again for this public hearing. He explained that the appeal is the subject of a July 24, 1995, Notice of Violation which was prompted by a complaint filed in April 1995. Mr. Shoup said given the length of time that has elapsed and the lack of effort on the part of the appellant, staff could not support a deferral request.

The appellant, Daniel Horseman, said due to the short notice his attorney was unable to be present; therefore, they were requesting a deferral. Mr. Dively asked the appellant if his attorney had provided him with dates that he would be available. Mr. Horseman said he could contact his attorney if the Board would like. Mr. Pammel pointed out that the appellant's attorney had specifically requested January 30th.

Mr. McPherson made a motion to dismiss the appeal. Mr. Pammel seconded the motion which carried by a vote of 5-1-1 with Mr. Hammack abstaining. Mr. Kelley voted nay and added that he would not like to see the appellant suffer if his attorney had made an error.

(NOTE: Later in the public hearing the BZA reconsidered its action and scheduled the appeal for March 19, 1996, at 8:00 p.m.)

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Page 414, January 30, 1996, (Tape 2), Scheduled case of:

9:30 A.M. RICHARD CORNICELLO, Appeal 95-M-059 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant's operation of an asphalt sealing business and the storage of related equipment and vehicles is a contractor's office and shop which is not permitted in the C-6 District. Located at 7130 C Little River Tnpk. on approx. 17,337 sq. ft. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((1)) 111. (DEF. FROM 12/12/95 FOR NOTICES)

Chairman DiGiulian said the BZA had received a request for withdrawal from the appellant. William Shoup, Deputy Zoning Administrator, said staff was recommending that the appeal be dismissed based on the appellant's lack of effort and failure to meet the notice requirement. He said the letter from the appellant was confusing since it appears that the appellant was requesting a withdrawal but at the same time was requesting that the BZA allow the use to remain. Staff has been unable to contact the appellant.

Mr. Pammel made a motion to dismiss A 95-M-059 for the failure of the appellant to prosecute. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 40, January 30, 1996, (Tape 2), Scheduled case of:

9:30 A.M. VOYTEN & ASSOCIATES, INC., APPEAL 95-S-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination of the Director of the Office of Comprehensive Planning regarding what constitutes the submission date of a 456 Review application and that the date of appellant's original application letter did not begin the 60-day period by which the Planning Commission must act on the submission as provided in Sect. 15.1-456 of the Virginia Code. Located at 13451 Braddock Rd. on approx. 227.93 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 12. (DEF. TO 12/19/95. (MOVED FROM 12/19/95 DUE TO BZA HEARING BEING CANCELLED).

Mr. McPherson made motion to defer A 95-S-060 to March 5, 1996. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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The BZA recessed at 10:45 a.m. and reconvened at 10:58 a.m.

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Page 415, January 30, 1996, (Tape 2), Scheduled case of:

9:30 A.M. J.W. FORTUNE, LAMIRABELLE, IVERSON TECHNOLOGY, ET. ALS., APPEAL 95-D-067 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the approval of Site Plan No. 7975-SP-02-2, McLean Square, by the Director of the Department of Environmental Management on the grounds that such site plan violates the applicable provisions of the Zoning Ordinance regarding screening, sanitary sewer service, parking, neighborhood protection, fire lanes, refuse collection and storm water management. Located at 6641 Old Dominion Dr. on approx. 3.22 ac. of land zoned C-6 and HC. Dranesville District. Tax Map 30-2 ((1)) 59. (DEF. FROM 1/16/96.)

Dennis King, Chief, Site Review Branch, presented staff's position as outlined in the memorandum dated January 2, 1996. He said the appellants were contending that sanitary sewer facilities were not shown correctly; that the parking, fire lanes, and solid waste collection are inadequate; and, that the storm drainage and storm water were not properly addressed. Mr. King said since the issue dealing with transitional screening was not included in the first filing of the appeal and was filed outside the thirty day time frame, staff believed the issue need not be considered as a part of the appeal.

Henry Fitzgerald said the appellants were requesting that the approval of the site plan be reversed and returned to staff for further review to correct the items they believe to be deficient. He summarized the reasons for their request as outlined in the appeal application and the memorandum submitted to staff yesterday.

Randy Minchew said he was representing the landowner and with him were Grayson Hanes, another member of the law firm, as well as the site engineer and environmental engineer. He explained the landowner was merely doing renovations in order to bring in an anchor store which would benefit the shopping center. Mr. Minchew addressed the issues raised by the appellants and said he believed the site plan had received a thorough review and pointed out that certain requirements have to be met prior to a Non-Residential Use Permit being issued.

Dave Crenshaw said he has been a resident of McLean since 1957 and cited the inadequate parking at the shopping center and said he believed adding another store would aggravate the situation.

David Rigby said he was a professional engineer with over 25 years of experience and outlined his credentials for the BZA. He said he reviewed the sewer lines on the site at the request of the appellants and that he believed the sewer line at the shopping center was inadequate and was in a serious state of disrepair and failure.

Kevin Murray, President of Tri-Tek Engineering, addressed the allegations raised in the appeal with regard to the sewer lines at the shopping center. He submitted documentation between his office and McLean Square Associates outlining his company's inspection of the site.

Jim Newell, President of Bryn Mawr Citizens Association, believed the proposed additions to the shopping center, if properly planned and maintained, has the potential for enhancing the community. He added that McLean Square Associates has exhibited a spirit of cooperation by seeking the residents' input and making commitments to the Association and to the County in response to those concerns.

Helen Unanks, represented the owners of the McLean Doctors Building which is located to the rear of the shopping center. She expressed concern with inadequate parking and asked that the existing retaining wall be repaired and maintained between the two parking areas to prevent overflow parking and eliminate cut through traffic.

Tom Lindsey, owner of Raybeth, Incorporated, said his company leases a store in the shopping center near LaMirabelle and he also was concerned with the inadequate parking.

Craig Crenshaw expressed concern with the inadequate parking and the inadequate sewer lines. He said if the sewer lines fail the tenants will suffer, not the owner.

Dr. Harry Reahl, 1521 Emerson Avenue, McLean, Virginia, said when he and his wife purchased their house in the fall of 1993 one of their main concerns was its close proximity to the shopping center's alley and how it would affect their life in the house and the resale of their house. The speaker said many of their fears have come to pass with large garbage trucks going up and down the alley early in the morning, the debris from the shopping center blowing on to their property, and people from the shops washing their cars and playing loud music. Dr. Reahl said they did not oppose the additional shop but they would like it to comply with the County regulations.

Jim Wellerber said he has been a business citizen of McLean, and formerly Falls Church, for approximately 23 years first as a real estate agent and developer and now as a mortgage broker. He proceeded his credentials. He said after listening to the testimony it appeared there was a miscommunication between the tenants, landlord, and some of the residents. Mr. Wellerber said he has dealt with the developer for approximately 6 years and during those years he has never known the partnership to back out on a promise.

Ted Britt, with Tri-Tek Engineering, said his firm prepared the site plan under appeal and outlined his credentials. He said the plan has undergone a tremendous amount of scrutiny not only from his office but from the public, tenants of the center, private consultants, and County staff. Mr. Britt submitted documents to the BZA addressing issues raised with regard to parking and the sanitary sewer lines.

Mr. Pammel asked what the gross floor area of the site was prior to the changes for the additional store. Mr. Britt replied the addition added approximately 7,000 square feet bringing the total to 51,478 square feet.

An unidentified speaker said he has been a long time resident of McLean and asked the BZA to ensure that the project be examined very carefully.

Nancy Manning said she has been a member of the business community for a number of years and is very familiar with the shopping center and that she has never experienced a parking problem. She said the landlord has rights also and believed that he had followed all the proper procedures while trying to upgrade the shopping center.

Herb Becker said he has been involved in planning and zoning in the McLean area for approximately 15 years and said he believed the site plan was flawed and that the County has an obligation to protect the public. He urged the BZA to remand the site plan back to staff for further review.

David Wilson said he is a resident of McLean and believed the issues brought out in the testimony needed to be addressed but believed the project should move ahead.

Jane Woo said she and her husband own the Forbidden City restaurant, trade name J. W. Fortune, Inc. She added that she could not understand why they had to hire a lawyer to get staff to correct the site plan.

In closing, Mr. King reiterated his earlier comments.

Mr. Fitzgerald said staff has clearly and obviously applied the wrong standards.

Chairman DiGiulian closed the public hearing.

Mr. Pammel commended all parties for their input. He believed the site plan should go back to staff for further evaluation since there appeared to be questions that needed to be addressed. Mr. Pammel said it also appears that the gross floor area of the site was increased by 13.6 percent which is not a small amount of improvement and it needs to be addressed relating to the adequacy of the screening, storm drainage, and parking. He made a motion to uphold the appellant since he was not convinced that staff had thoroughly reviewed the appeal from the standpoint of an expansion. Mr. Hammack seconded the motion.

Mr. Kelley said he was opposed to the motion based on the testimony because he believed staff had performed its job properly and had followed the ordinances and laws of both Fairfax County and the State of Virginia.

The motion failed by a vote of 2-5 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Dively, Mr. Kelley, Mr. Ribble, and Mr. McPherson voting nay.

Mr. Dively agreed everyone was well spoken but that he believed the appellant's points were refuted. He added that he was mildly concerned with the parking and although the resolution of the parking was not pretty; it was satisfactory under the Ordinance. He made a motion to deny the appeal. Mr. Kelley seconded the motion which carried by vote of 5-2 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, Mr. Ribble, and Mr. McPherson voting aye; Mr. Hammack and Mr. Pammel voting nay. The decision will become final on February 7, 1996.

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MR. & MRS. ALEX SMITH, VC 95-D-127

(The Board passed over this case earlier in the public hearing to allow staff an opportunity to contact the applicant.)

Jane Kelsey, Chief, Special Permit and Variance Branch, said she had talked with the agent and it appears there was a miscommunication between the applicant and agent as to whom should appear at the public hearing. He asked staff to apologize to the Board on their behalf and asked that the application be deferred to March 5, 1996, at 9:00 a.m. She said there are currently eight cases on that day.

Mr. Kelley made a motion to defer VC 95-D-127 to the date suggested by staff. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 418, January 30, 1996, (Tape 3), Action Item:

Approval of Resolutions from the January 23, 1996 hearing.

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 418, January 30, 1996, (Tape 3), Action Item:

Mitchell Family Trust; Harold O. Miller, Agent Appeal Acceptance Request

Mr. Pammel made a motion to accept the appeal only as to the issue of signs and that the issues concerning proffers not be addressed by the Board of Zoning Appeals (BZA). William Shoup, Deputy Zoning Administrator, informed the BZA that Mr. Baskins, a partner of Mr. Hansbarger's was present to address the BZA.

Mr. Baskins came forward and presented arguments as to why the entire appeal should be accepted.

Mr. Dively asked if the appellant was asking that the entire appeal be heard by the BZA. Mr. Baskins said that was correct.

Mr. Shoup said the word at issue was "may" and stated that the appellant is afforded an option as to whether or not to appeal, but not an option as to whether they appeal to the BZA or the Board of Supervisors. He said staff believed the only issue that would properly be before the BZA would be the sign issue.

Mr. Kelley opposed the motion as he did not believe the BZA should limit the scope of the appeal.

Mr. Pammel believed that if the BZA begins interpreting proffers, which is a legislative function, it would be departing from its objectives.

Chairman DiGiulian called for the vote. The vote was 3-3-1 with Mr. Hammack, Mr. Pammel, and Mr. McPherson voting aye; Mr. Dively, Mr. Kelley, and Mr. Ribble voting nay; Chairman DiGiulian abstained. The motion failed. The Board agreed to accept the appeal and indicated that it would consider the issue of jurisdiction at the time of the public hearing.

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Page 418, January 30, 1996, (Tape 3), Action Item:

Request for Additional Time for Trustees of the Woodlawn Baptist Church, SP 93-V-021

Mr. Hammack made a motion to grant the applicant's request. Mr. McPherson seconded the motion which carried by a vote of 7-0. The new expiration date recommended is July 23, 1996

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Page 418, January 30, 1996, (Tape 1), Action Item:

Request for Additional Time for George M. Neal, II, Trustee, SP 91-V-065

Mr. Hammack made a motion to grant the applicant's request. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new expiration date recommended is August 18, 1997.

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Page 419, January 30, 1996, (Tape 3), Scheduled case of:

Daniel T. Horseman, Appeal 95-S-055

(This application was dismissed earlier in the public hearing.)

William Shoup, Deputy Zoning Administrator, said the appellant's attorney was present and would like to address the BZA.

Mr. Pinkowski apologized to the BZA and said he believed staff had played a game with him. He said he received a call in December 1995 from Jane Gwinn, Zoning Administrator, who asked if the notices had been mailed and if he planned to submit a supplemental package in support of the appeal. Mr. Pinkowski said part of that package would have been police records going back to the middle 1980's dealing with commercial vehicles that are parked on the subject property, but he had been unable to obtain those records. He said the January 30th date was suggested by Ms. Gwinn and when he informed her of a scheduling conflict on that date he was told the matter would be continued until April. He said last Friday he received a memorandum from Mr. Shoup saying that he could not support a deferral to April 2nd. Mr. Pinkowski said there was no imminent danger to anyone from what is occurring on the property and pointed out that these conditions have existed for 20 years. He said he would not like to be forced to file litigation to reserve the appellant's rights because the BZA is denying the deferral.

Mr. Dively asked staff for a March date. Jane Kelsey, Chief, Special Permit and Variance Branch, said there were no cases presently scheduled for the March 19th meeting.

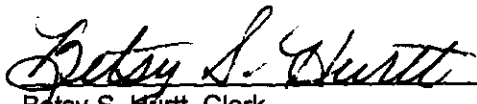
Mr. Dively made a motion that the BZA reconsider its action to dismiss the appeal. Mr. Hammack seconded the motion which carried by a vote of 7-0. Mr. Dively then made a motion to schedule the appeal for March 19th at 8:00 p.m. with no further extensions. Mr. Hammack seconded the motion which carried by a vote of 5-2 with Mr. Pammel and Mr. McPherson voting nay.


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As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Betsy S. Hurtt

Approved on: March 26, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 6, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:09 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 421, February 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. PAUL G. & LYNN L. MUNCH, VC 95-V-116 Appl. under Sect(s).18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line. Located at 8419 Doyle Dr. on approx. 14,920 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (3) 7. (OUT OF TURN HEARING GRANTED). (DEF. FROM 12/19/95 DUE TO BZA HEARING BEING CANCELED. MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Munch, 8419 Doyle Drive, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated December 12, 1995. The applicant requested a variance of 1.7 feet to the minimum side yard.

Mr. Munch presented the variance request as outlined in the statement of justification submitted with the application. He said the neighbors had no objection to the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-V-116 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 12, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-116 by PAUL G. & LYNN L. MUNCH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.3 feet from side lot line, on property located at 8419 Doyle Drive, Tax Map Reference 102-4((5))(3)7, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 6, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,920 square feet.
4. The applicant presented testimony indicating compliance with the standards for a variance.
5. The lot has an unusual configuration.
6. The lot is narrow and tapers inward from the front property line towards the rear.
7. The variance request is minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific room addition shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated September 27, 1982 and revised through October 2, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

Page 423 February 6, 1996, (Tape 1), PAUL G. & LYNN L. MUNCH, VC 95-V-116, continued from Page 422

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 423 February 6, 1996, (Tape 1), Scheduled case of :

9:00 A.M. VALE UNITED METHODIST CHURCH, SPA 73-C-187-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-C-187 for a church and related facilities to permit a nursery school. Located at 11528 Vale Rd. on approx. 5.62 ac. of land zoned R-1, Sully District. Tax Map 36-4 ((1)) 19. (OUT OF TURN HEARING GRANTED). (DEF. FROM 12/19/95 DUE TO BZA HEARING BEING CANCELED. MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent for the applicant, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated January 9, 1996. He informed the Board that the Development Conditions had been revised as of January 9, 1996.

Mr. Lawrence presented the applicant's request as outlined in the statement of justification submitted with the application. He said the church had been a good neighbor and he asked the members of the church to stand to show their support of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SPA 73-C-187-2 for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions contained in the staff report dated January 9, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 73-C-187-2 by VALE UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 73-C-187 for a church and related facilities to permit a nursery school, on property located at 11528 Vale Road, Tax Map Reference 36-4((1))19, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.62 acres.
4. The applicant met the standards required for a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

The conditions which are preceded by an asterisk indicate conditions previously imposed by the Board.

- *1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- *2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat consisting of 2 sheets prepared by Donald F. Mori, P.C. dated July 3, 1990, revised by J. Monaco & Associates, P.C., October 20, 1995 and approved with this application, as qualified by these development conditions.
- *3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- *4. The maximum seating capacity for the church sanctuary shall be limited to a total of 100 seats.
5. The maximum daily enrollment of the nursery school shall be thirty-six (36) children or such lower number as may be approved by the Health Department.
6. The maximum number of employees shall be limited to nine (9).
7. The maximum hours of operation for the nursery school shall be from 9:30 a.m. to 12:30 p.m., Monday through Friday.
8. A maximum of twenty (20) children shall use the outdoor play area at any one time.
- *9. Seventy-one (71) parking spaces shall be provided as shown on the special permit amendment plat. All parking shall be on site.
- *10. Transitional Screening 3 (50') shall be provided and maintained along the northwestern, northeastern and southwestern lot lines abutting residentially-used properties. The northern corner of the drainfield may extend into this screen yard as shown on the Special Permit Amendment Plat. Existing vegetation may be used to partially satisfy the transitional screening requirement provided it is supplemented to meet the equivalent of Transitional Screening 3.
- *11. Along the southeastern property line existing vegetation shall be retained and the supplemental vegetation maintained as shown on the plat to meet the equivalent of Transitional Screening 1 in order to minimize the adverse impacts of the parking area and building mass on adjacent residences.
12. The barrier requirement shall be waived along all property lines.
- *13. Existing foundation plantings shall be maintained around the building to minimize the adverse visual impacts on the adjacent residences.
- *14. The existing entrance drive to the property from Vale Road shall remain aligned with the pipestem driveways on the southeast side of Vale Road and shall remain paved. The landscaped island located within the vehicular turnaround shall be maintained and there shall be no parking in that area.

- *15. Any proposed lighting of the parking areas shall be in accordance with the following:
 The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 The lights shall focus directly onto the subject property.
 Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
- 16. All trash shall be stored on site in appropriate containers and shall be screened from view from the adjacent single family dwellings.
- 17. Signs shall be permitted in accordance with Article 12, Signs.

These conditions incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 425, February 6, 1996, (Tape 1), Action Item :

Request for Reconsideration
Gesher Jewish Day School of Northern Virginia, SP 95-P-066

Mr. Hammack said he was able to review in detail the request from Mr. Leroy because it was given to him last week, but had just reviewed the request that asked the Board to negotiate 32 different development conditions with Fran Wallingford of the Mantua Citizens Association. He stated that some of the proposed development condition changes were totally inappropriate and others dealt with issues that should have been raised at the public hearing. Mr. Hammack said to negotiate with a citizens' association after the vote had been taken was inappropriate and that he was not interested in reconsidering the request.

Mr. Hammack moved to deny the Request for Reconsideration for SP 95-P-066. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 425, February 6, 1996, (Tape 1), Action Item :

Request for Reconsideration
Joseph Robert Jr., VC 95-D-125

Page 426, February 6, 1996, (Tape 1), Joseph Robert Jr., VC 95-D-125, continued from Page 425

Mr. McPherson informed the Board that he was contacted by the applicant's agent. He said in his opinion there was still a major problem with the application. Mr. Dively said he agreed with Mr. McPherson, but, since the application did not prejudice or harm anyone the Board should give the applicant a chance to try and work out a new arrangement.

Mr. Dively moved to approve the Request for Reconsideration. Mr. Kelley seconded the motion which carried by a vote of 6-1 with Mr. Pammel voting nay. The public hearing was scheduled for March 26, 1996 at 9:00 a.m.

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Page 426, February 6, 1996, (Tape 1), Action Item :

Approval of January 30, 1996 Resolutions

Mr. McPherson moved to approve the Resolutions with the Gesher Jewish Day School of Northern Virginia, SP 95-P-066, resolution excluded from the motion. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 426, February 6, 1996, (Tape 1), Action Item :

Approval of December 5, 1995 Minutes

Mr. Hammack moved to approve the Minutes. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 426, February 6, 1996, (Tape 1), Action Item :

Approval of Gesher Jewish Day School Resolution

Mr. Hammack said he wanted to add three words to Development Condition 10 of the Gesher Jewish Day School Resolution. He said the end of that condition will read *to bring the use into compliance with this condition*. The three words added were "with this condition". He said last week he'd written out a rather long motion and didn't include all of it in his verbal motion and he wanted to amplify the reasons. Mr. Hammack said it seemed that people liked to argue over what all the words were, but, the development conditions or the other standards that apply, talked about the use being in harmony with the Plan. He said in returning a special use to a residential use, under our Ordinance, a school is in harmony with a residential use. Mr. Hammack said in his opinion the proposed use by the Gesher School is in harmony with the Plan. He said that staff's analysis talked about the use being in conformance, which is a narrower standard to some extent, and he felt the school itself is in harmony with the requirement and the Plan to maintain what would be considered a residential use. Mr. Hammack referenced a case cited in the footnotes to the Virginia Code, the Rowe case, which pertained to equal protection of applicants within a zoning district. He said you can't discriminate in uses that would be applied to them and that case provided some guidance to his thinking on how this case ought to be approached. He said because a denial of those rights was a denial of equal protection and a taking. Mr. Hammack stated that the Plan itself is supposed to be general in nature and the proposed language is very specific with respect to a specific piece of property. He said it is an attempt to zone through the use of the Plan and the Plan is to be used only as a guide. Mr. Hammack concluded by stating these comments were only an amplification of his comments last week, and he had been told by various sources that the Board would probably have to amplify this at some point and he thought he would do it while it was fresh in his mind. He asked that the comments be made part of the basis for his motion unless someone had an objection.

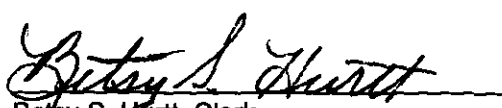
Mr. Hammack moved to approve the Resolution for Gesher Jewish Day School of Northern Virginia, SP 95-P-066, as amended. Mr. Kelley seconded the motion which carried by a vote of 7-0.

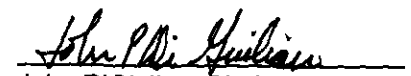
Page 427, February 6, 1996, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 9:30 a.m.

Minutes by: Regina Thorn

Approved on: March 5, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 13, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 329, February 13, 1996, (Tape 1), Scheduled case of :

9:00 A.M. RIZWAN, ALI, FARIDA, SUSAN B. AND ADNAN MAHBOOB, VC 95-S-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 0.7 ft. and 3.0 ft., and deck 2.2 ft. from rear lot line. Located at 9482 Gauge Dr. on approx. 15,849 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((16)) 82. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Aubrey Burrow replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report dated February 6, 1996. The applicant requested variances of 24.3 feet to the minimum rear yard requirement for a screened porch, 22.0 feet to the rear yard requirement for a gazebo, and 1.95 feet to the minimum rear yard requirement for a deck.

Mr. Burrow, the applicant's agent, presented the applicant's request as outlined in the statement of justification. He said the homeowners' association and the neighbors supported the application.

Chairman DiGiulian called for speakers.

Macon Sims, adjacent property owner, spoke in support of the application.

Chairman DiGiulian closed the public hearing. He then reopened the public hearing at Mr. Hammack's request.

Mr. Hammack and Mr. Mahboob, the applicant, discussed the possibility of a lesser variance request and placing the addition on another part of the lot.

In response to Mr. Ribble's question, Mrs. Mahboob, replied that a deck was offered at the time the house was purchased, but they had decided to contract with an outside builder.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated the house is large and is set far back on the property. He said there is room to expand and construct on the northeast side, rear of the house. Mr. Hammack said he could not support a screened porch being constructed that close to a lot line and moved to grant in part VC 95-S-132 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 6, 1996.

Mr. Kelley seconded the motion for purposes of discussion. He said the Board should waive the 12-month waiting period and allow the applicant to file a new application on the same property. Mr. Ribble said he agreed with Mr. Kelley.

Mr. Hammack withdrew the motion.

Mr. Dively moved to deny VC 95-S-132 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-132 by RIZWAN, ALI, FARIDA, SUSAN B. AND ADNAN MAHBOOB, under Section 18-401 of the Zoning Ordinance to permit construction of additions 0.7 feet and 3.0 feet, and deck 2.2 feet from rear lot line, on property located at 9482 Gauge Drive, Tax Map Reference 97-4((16))82, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 15,849 square feet.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

Page 431, February 13, 1996, (Tape 1), RIZWAN, ALI, FARIDA, SUSAN B. AND ADNAN MAHBOOB, VC 95-S-132, continued from Page 430

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

Mr. Dively made a motion to waive the 12-month waiting period and allow the applicant to refile a new application on the same property. Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1996.

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Page 431, February 13, 1996, (Tape 1), Scheduled case of :

9:00 A.M. CLIFFORD P. & LYNNE MERRITT, SP 95-Y-070 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.6 ft. from side and rear lot lines. Located at 5429 Gladewright Dr. on approx. 13,175 sq. ft. of land zoned R-3. Sully District. Tax Map 54-1 ((11)) (7) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clifford Merritt, 5429 Gladewright Drive, Centreville, Virginia, replied that it was.

Jane Kelsey, Branch Chief, introduced Heidi Powell, a new Staff Coordinator with the Special Permit and Variance Branch. Ms. Powell made staff's presentation as contained in the staff report dated February 6, 1996. The special permit request was for a reduction to the minimum yard requirements based on an error in building location. A modification of 6.4 feet was required for the minimum side yard requirement and a modification of 11.4 feet was required for the minimum rear yard requirement.

Mr. Merritt presented the special permit request as outlined in the statement of justification submitted with the application. One point was that he had requested and received information from the Department of Environmental Management concerning obtaining a building permit for a shed and was not told he had to set the shed back from the lot lines. He submitted a copy of the document he had received from the County. He presented photographs to the Board.

Mr. Dively asked Mr. Merritt what caused him to apply for a special permit. Mr. Merritt replied that a neighbor had complained about the shed and a Zoning Inspector advised him to apply for a special permit.

Chairman DiGiulian called for speakers.

Patricia Nice, adjacent property owner, and Wendy Young, owner of lot 22, spoke in opposition. They expressed concerns that the applicant had not obtained approval from the homeowners' association and that the shed was not screened.

Mr. Merritt addressed the speakers' concerns in his rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the application could not be denied because the applicant had followed the proper procedures for building a shed. He moved to grant SP 95-Y-070 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 6, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-Y-070 by CLIFFORD P. & LYNNE MERRITT, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.6 feet from side and rear lot lines, on property located at 5429 Gladewright Drive, Tax Map Reference 54-1((11))(7)23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location of the specified accessory storage shown on the plat submitted with this application and is not transferable to other land.

Page ~~432~~ 433, February 13, 1996, (Tape 1), CLIFFORD P. & LYNNE MERRITT, SP 95-Y-070, continued from Page ~~432~~

- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys dated September 8, 1995, submitted with this application, as qualified by these development conditions.
- 3. The structure shall be painted and maintained in good condition at all times.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 6-1 with Mr. McPherson voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page ~~432~~ February 13, 1996, (Tape 1), Scheduled case of :

9:00 A.M. TRINITY PRESBYTERIAN CHURCH, SP 95-S-071 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located at 6608 Ox Rd. on approx. 6.41 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((1)) 20A and 20B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Mittereder replied that it was.

Susan Langdon, Staff Coordinator, presented the applicant's request as outlined in the statement of justification submitted with the application. She said staff recommended approval of the application.

The applicant's agent, Mark Mittereder, presented the applicant's request as outlined in the statement of justification submitted with the application. He discussed concerns the applicant had with Development Conditions 13 and 14.

Chairman DiGiulian called for speakers.

Drew Cykoski spoke in opposition stating that traffic was a concern.

Mr. Mittereder addressed the speaker's concern in his rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 95-S-071 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 6, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-S-071 by TRINITY PRESBYTERIAN CHURCH, under Section 3-C03 of the Zoning Ordinance to permit a church and related facilities, on property located at 6608 Ox Road, on 6.41 acres of land, Tax Map Reference 87-1((1))20A and 20B, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page ~~434~~ February 13, 1996, (Tape 1), TRINITY PRESBYTERIAN CHURCH, SP 95-S-071, continued from Page ~~433~~

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 1996; and

WHEREAS, the Board has made the following findings of fact as outlined in the Staff Report; and:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 6.41 acres.
4. The applicant met the necessary requirements for a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Arch Group, dated November 3, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of seats in the main area of worship shall be limited to a total of 240 seats.
6. Sixty-two (62) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.
7. Existing vegetation along the northern and southern lot lines of Lot 20B shall be preserved and maintained as indicated on the approved special permit plat. A row of evergreen trees, a minimum of six (6) feet in height and spaced no greater than fifteen (15) feet on center, shall be provided along the entire length of the northern and southern lot lines to supplement the existing vegetation. This combination of existing vegetation and supplemental plantings shall satisfy the requirements of Transitional Screening 1.

Foundation plantings shall be provided around the church building, and evergreen and deciduous trees and shrubs shall be provided along the eastern lot line of Lot 20B to soften the visual impact of the structures and parking lot. These plantings shall be in addition to those depicted on the approved special permit plat.

Transitional screening requirements shall be waived along the western lot line of Lot 20B.

Existing vegetation on Lot 20A shall be preserved and maintained undisturbed as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1. No

clearing or grading shall be allowed except clearing of dead, dying or hazardous trees as determined necessary by the Urban Forestry Branch, DEM.

Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Environmental Management at the time of site plan review. Additionally, if the existing vegetation is not preserved as depicted on the approved special permit plat, the Urban Forestry Branch shall require replacement plantings in order to meet the transitional screening requirements.

- 8. The barrier requirement shall be waived along the western, southern and eastern lot lines on Lot 20B. A six foot high solid wood fence shall be provided along the northern lot line of Lot 20B. This barrier shall be located between the proposed structures and the transitional screening yard and shall extend the entire length of the lot line from the proposed gymnasium to the existing frame dwelling.

The barrier requirement shall be waived on Lot 20A.

- 9. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall be a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
 - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.

- 10. Pedestrian crosswalks and sidewalks shall be provided to the satisfaction of DEM to afford safe access from the parking lots to the church building.

- 11. The two temporary trailers shall be approved for a time period not to exceed two (2) years from the date of approval of the Non-Residential Use Permit for the trailers. Development Conditions #1, 2, 3, 4, 9, 11, 13, 14, 15 and 16 shall be implemented prior to the issuance of the Non-Residential Use Permit for the trailers. The maximum number of seats in the trailers shall be limited to 100. The asphalt driveway entrance and twenty-five (25) parking spaces adjacent to the trailers as depicted on the special permit plat shall be installed prior to the issuance of the Non-Residential Permit for the trailers. If the trailers are still in use at such time as clearing and grading is completed for the proposed church buildings, Development Condition #7 shall be implemented at that time.

- 12. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM).

- 13. Lot 20A shall be maintained and preserved as depicted on the approved special permit plat. No clearing of vegetation or structures shall be allowed on the lot except as qualified above.

- 14. Turn lanes, the site entrance standards, and turnarounds within the parking lot shall be provided as determined necessary by DEM and VDOT at the time of site plan review.

- 15. A sign permit shall be obtained for any sign proposed for this site.

- 16. Lot 20A shall not be developed without an amendment to this special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards. The applicant shall be

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to the special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page ~~436~~, February 13, 1996, (Tape 1), Scheduled case of :

9:30 A.M. AMERICAN PCS, L.P. AND BRANDYWINE SWIM & RACQUET CLUB, INC., SPA 67-B-568 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-B-568 for swimming pool, wading pool and bath house to permit a telecommunications facility to include a monopole. Located at 9537 Helenwood Dr. on approx. 3.04 ac. of land zoned R-2. Braddock District. Tax Map 69-1 ((4)) 1A. (IN ASSOCIATION WITH SE 95-B-061). (DEF. FROM 10/31/95 AT APP.'S REQ.) (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jim Michael, with the firm of Jackson & Campbell, replied that it was.

Peter Braham, Staff Coordinator with the Special Exception and Rezoning Branch, made staff's presentation as outlined in the staff report dated February 6, 1996. He noted the revised development conditions dated February 6, 1996 and said staff recommended approval of the application.

Mr. Michael presented the special permit request as outlined in the statement of justification submitted with the application. He discussed the applicant's concern with Development Condition 7, which pertained to the parking requirement.

Chairman DiGiulian called for speakers.

Bob Grindling, president of Brandywine Swim and Racquet Club, spoke in support of the application. He said the majority of the neighborhood signed a petition in support of the application.

Thomas Tarrantino, 9523 Jomar Drive, and Norville Harrison, 9513 St. Charles Place, spoke in opposition. They expressed concerns about the monopole/telecommunications facility being obtrusive and unsightly. They also felt the purpose of the application was for financial gain. Photographs were presented to the Board.

Mr. Michael addressed the speakers' concerns in his rebuttal.

The BZA members questioned staff concerning the parking requirement and found that staff had no objection to the proposed changes of Development Condition 7 suggested by the applicant.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SPA 67-B-568 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 6, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 67-B-568 by AMERICAN PCS, L.P. AND BRANDYWINE SWIM & RACQUET CLUB INC., under Section 3-203 of the Zoning Ordinance to amend SP 67-B-568 for swimming pool, wading pool and bath house to permit the addition of a telecommunications facility to include a monopole, on property located at 9537 Helenwood Drive, Tax Map Reference 69-1((4))1A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 1996 and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 3.04 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the group standards for this use as contained in Sections 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by URS Consultants dated 9/20/95 and approved with this application, as qualified by these development conditions. These conditions shall not preclude changes or additions to the telecommunications facility. Such changes may be approved without an amendment to this special permit.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. The maximum number of swimming club employees on site at any one time shall be three (3).
- *6. The maximum number of family memberships shall be 250.

- *7. There shall be 46 parking spaces provided as shown on the special permit plat. Three of these spaces, located adjacent to the telecommunications facility may be used for equipment structures associated with antennas installed on the monopole. All parking shall be on site.
- *8. The regular hours of operation for the swimming pool shall be limited to 9:00 A.M. to 9:00 P.M. Swim team practice shall not begin before 8:00 A.M. There shall be no more than four (4) league swim meets conducted at this facility per year. The hours of operation for the offices shall be limited to 7:30 A.M. to 9:30 P.M.
9. After-hour parties for the swimming pool shall be governed by the following:
 - Limited to six (6) per season.
 - Limited to Friday, Saturday and pre-holiday evenings. Three (3) week night parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.
 - Shall not extend beyond 12:00 midnight.
 - The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
 - Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.
10. During discharge of swimming pool waters, the following operational procedures shall be implemented:
 - Sufficient amount of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
 - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.
- *11. To minimize the impact of the lights on adjacent properties, the lights shall be directed downward and shall be shielded to prevent glare on adjacent properties. Parking lot lights shall not exceed twelve (12) feet in height.
12. The material, tree limbs, concrete chunks and other debris, which has been dumped down the slope below the parking lot shall be removed by the operator of the telecommunications facility as part of the construction of the telecommunications site. There shall be no dumping of material or debris, including but not limited to tree limbs, grass clippings, concrete blocks, or other such yard and construction waste down the slope.
13. Energy dissipation devices shall be placed at the ends of the concrete drainage to minimize erosion at the outfall points by the operator of the telecommunications facility as part of the construction of the telecommunications site. Such devices shall be designed in a manner to minimize disturbance of the existing forest and, therefore, modifications of the Public Facility Manual standards may be considered by the Director, DEM, if he determines that such are advisable.
14. The Environmental Quality Corridor shall remain undisturbed except as required to clear up the

debris and provide energy dissipation devices at the end of the concrete drainageways as noted above in these conditions.

- 15. The parking lot shall be repaired and re-stripped in accordance with the Public Facilities Manual by the operator of the telecommunications facility as part of the construction of the telecommunications site, subject to the approval of DEM.
- 16. The above conditions shall supercede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0-1 with Mr. Hammack abstaining from the vote. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1996. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:40 a.m. and reconvened at 10:55 a.m.

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Page 439, February 13, 1996, (Tape 1&2), Scheduled case of :

9:30 A.M. EDWIN L. KESLER, APPEAL 95-B-068 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that materials being stored on the appellant's property constitutes scrap material and such storage is most similar to a junk yard, a use not permitted in the R-3 District. Located at 7427 Chatham St. on approx. 17,534 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (15) 14.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 5, 1996. He said there had been virtually no progress made on the proposed addition. Mr. Shoup informed the Board of the numerous Building Permits the appellant had obtained since 1971. He presented photographs of the property that showed the progression of the proposed addition from 1990 to the present. Mr. Shoup said there was a question as to whether the addition would ever be built. He stated that the large quantities of material on the property constituted a junkyard which is not allowed in the R-3 District.

Mr. Dively asked if there was an active Building Permit. Mr. Shoup replied that there is an active permit that was approved in October, 1994.

Mr. Kesler, the appellant, presented the arguments forming the basis for the appeal. He discussed the numerous Building Permits obtained since 1971.

Chairman DiGiulian called for speakers.

Page 440, February 13, 1996, (Tape 1&2), EDWIN L. KESLER, APPEAL 95-B-068, continued from Page 439)

The following speakers came forward to support the Zoning Administrator's position. Preston Palmer, member of the homeowners' association; E. R. Layne, 7426 Chatham Street; Ann Olson, 5401 Littleford Street; and Suzanne Olson, 1203 Falster Road. They expressed concerns pertaining to safety issues and felt the property was an eyesore.

Rebecca Chad, reporter with the Connection Newspaper, spoke in support of the appellant's position.

Mr. Kesler addressed the speakers' concerns in his rebuttal.

Mr. Kelley asked Mr. Kesler when was the last time anyone resided on the property. Mr. Kesler replied 4 to 5 months ago.

Chairman DiGiulian closed the public hearing.

Mr. Dively said if someone had hired a contractor to do the work and it took more than a couple of months, people would be screaming. He said 25 years was a ridiculously long period of time to build an addition. Mr. Dively said the neighbors had a right to see that construction of this nature is done in a reasonable time frame which lapsed two decades ago. He moved that the Board uphold the decision of the Zoning Administrator. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Kelley said he felt the County should bring in the full weight of any authority that it has to close this rat's nest.

Mr. Pammel said the property was clearly an eyesore.

Mr. Hammack said he wondered why the County had not taken legal action sooner.

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Page 440 February 13, 1996, (Tape 2&3), Scheduled case of :

9:30 A.M. DIANA KINCANNON, APPEAL 95-P-069 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the proposed use of the single family dwelling on the subject property for the operation of a residential facility for emotionally disturbed children by Alternative House, Inc. is a group residential facility and is allowed by right on the property. Located at 8613 Janet Ln. on approx. 32,625 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((14)) 68.

9:30 A.M. PHILLIP L. AND NORMA L. RADOFF, Appeal 95-P-070 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the proposed use of the single family dwelling on the subject property for the operation of a residential facility for emotionally disturbed children by Alternative House, Inc. is a group residential facility and is allowed by right on the property. Located at 8613 Janet Ln. on approx. 32,625 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((14)) 68.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 5, 1996. He said the children placed at the Alternative House facility were placed there because they exhibited emotional disturbances. Mr. Shoup said the facility is properly licensed by the Department of Mental Health/Mental Retardation and Substance Abuse Services. He said the facility met the criteria of a group residential facility as defined. Mr. Shoup stated that based on the definition of handicapped, which is set forth in the Federal Fair Housing Amendment Act, staff believed that the circumstances of the home also satisfied that criteria. He stated that the Zoning Ordinance provides that a dwelling unit may be occupied by a group residential facility as a matter of right and based on that, it was staff's position that the use is allowed and the home can occupy the property as a use by right. Mr. Shoup stated that Dr. Jim Stratoudakis, Director of Mental Health Services for Fairfax County, representatives from the Community Services Board, David Stoner and Alan Weiss from the County Attorney's Office,

Page 441, February 13, 1996, (Tape 2&3), DIANA KINCANNON, APPEAL 95-P-069 and PHILLIP L. AND NORMA L. RADOFF, Appeal 95-P-070, continued from Page 440

were present to respond to questions. Mr. Shoup asked the Board if they would give Alternative House and their counsel an appropriate amount of time to present their position because they were the third party involved in the appeal.

Mr. Dively noted that on the application it is referred to as a temporary care emergency shelter. Mr. Shoup said the length of stay is not specified in the Ordinance provision and while the children are at Alternative House, it is their residence.

The Board members and Mr. Shoup discussed the definitions of mentally ill, emotionally disturbed, and handicapped as stated in the Code. There was also discussions between the Board members and Mr. Shoup pertaining to substance abuse and addictions.

John Foote, agent for the appellant, presented the arguments forming the basis for the appeal.

Phillip Radoff, appellant, presented arguments forming the basis for the appeal.

William Leahy and Jim Warwick from Alternative House, came forward to support the Zoning Administrator's position.

Chairman DiGiulian called for speakers.

Debra Ryer, resident of Oakdale Park; Linda McGinnis, resident of Oakdale Park; Father Mark Moretti, Associate Pastor of St. Mark's Church in Vienna; Frank Grace, owner of the subject property; Roger Bartment, clinical consultant of Alternative House; and Eilena Burn, counselor of Alternative House, came forward to support the Zoning Administrator's position.

The following speakers spoke in support of the appellant's position: Kelly Kincannon, husband of the appellant, Diana Kincannon and adjacent property owner; Lucy Kellar, resident of Oakdale Park; Charles Kate, 8620 Janet Lane, Fred Spurlock, resident of Oakdale Park; Jim Gardener, 8613 Janet Lane; Phil Kellar, resident of Oakdale Park; Victor Hodson, 1105 Redwood Drive, Diane Kincannon, appellant; and Paula Williams, resident of Oakdale Park.

Mr. Shoup said staff believed the use satisfied the criteria of handicapped and said staff does not believe they should have been precluded from recognizing the federal legislation in their definition. He said Alternative House is a home for the mentally ill; and therefore, it satisfies the criteria of the Zoning Ordinance definition of Group Residential Facility. Mr. Shoup stated that the staff report for the Group Residential Facility amendment clearly identified certain types of facilities that would be considered a group residential facility and that this facility was one of the types envisioned by the Board of Supervisors in adopting the amendment. He said the children are emotionally disturbed which staff believed equated to mental illness. Mr. Shoup asked the Board if they would allow Mr. Stratoudakis to provide some additional comments on how emotional disturbance equates to mental illness.

Mr. Stratoudakis discussed the correlation between emotional disturbance and mental illness.

Mr. Dively and Mr. Shoup discussed the definition of residence.

Mr. Foote and Mr. Radoff gave their rebuttals.

Chairman DiGiulian closed the public hearing.

Mr. Dively said one of the problems with this type of public hearing is that there really are no rules of evidence. He stated the Board hears a lot of information that doesn't help them make a decision. Mr. Dively said he has no doubt that Alternative House does wonderful work, does needed work, frankly, does God's work, but that doesn't help make the narrow zoning decision. He stated that the narrow zoning decision is whether or not this is a group home residential facility. Mr. Dively said one issue is the mental illness issue and that he was not convinced that being emotionally disturbed or being abused equals mental illness. However, powerful testimony was given but, the speaker said, a negligible number of

Page 442, February 13, 1996, (Tape 2&3), DIANA KINCANNON, APPEAL 95-P-069 and PHILLIP L. AND NORMA L. RADOFF, Appeal 95-P-070, continued from Page 441

children in the facility would not be mentally ill. The speaker said it is possible to say that all the children can be defined as mentally ill, as a matter of fact; however, they fail on the residence requirement. Mr. Dively said "residence" does have meaning, that it doesn't mean just live there. He said it is throughout the Virginia State Code, and it does involve a permanent or indefinitely long intention to stay at a place, and that it was often a jurisdictional requirement. Mr. Dively said on those grounds he would move to overturn the decision of the County's holding in this matter.

Mr. Kelley seconded the motion.

Mr. Hammack expressed concern about the type of licensure and the application. He said when the Board looks at these types of things they have to look at what a person has applied for and what a contract is for. Mr. Hammack said the contract is not for group home; it is a contract for an emergency shelter. He said the BZA knows what the words mean; they are not that ambiguous that they need a lot of interpretation. Mr. Hammack stated that the license by the State is limited to providing temporary care and treatment, not permanent care. He did not think that Alternative House was arguing that these are transient children and concluded by saying he was concerned with the transient nature and the type of licensure.

Mr. McPherson said he wanted the people in the audience and the speakers to know that from his personal perspective, he agreed with Mr. Dively's motion. He stated he did not want them to think that the Board was insensitive to the needs of the children. Mr. McPherson said some of the members have been involved in similar cases but the fact was that the subject application did not fit the bill. Mr. Pammel agreed with Mr. McPherson's comments.

The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 442, February 13, 1996, (Tape 3), Action Item :

Approval of February 6, 1996 Resolutions

Mr. Dively moved to approve the Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 442, February 13, 1996, (Tape 3), Action Item:

Approval of September 12, 1995 and November 14, 1995 Minutes.

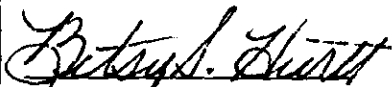
Mr. Kelley moved to approve the September 12, 1995 and November 14, 1995 Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.


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As there was no other business to come before the Board, the meeting was adjourned at 1:30 p.m.

Minutes by: Regina Thorn

Approved on: April 2, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 20, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:02 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 443, February 20, 1996, (Tape 1), Scheduled case of:

8:00 P.M. WILLIAM G. OTIS, VC 95-V-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from side lot line. Located at 1203 Westgrove Blvd. on approx. 15,347 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((5)) (6) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Craig Durosco, with Sun Design Remodeling Specialists, Inc., 5799-K Burke Center Parkway, Burke, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She said the minimum side yard is 12 feet and the applicant was requesting a variance of 1.4 feet in order to enclose an existing structure.

Mr. Durosco said the applicant purchased the house with the existing screened porch in 1988. Since the porch has now deteriorated, the applicant would like to upgrade the structure and enclose it with glass. Mr. Durosco said the roof line would remain the same and pointed out that the structure will be 10.6 feet from the side lot line.

Chairman DiGiulian asked if the structure would remain in the same location. Mr. Durosco said the existing structure and foundation would remain the same.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 95-V-131 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated February 13, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-131 by WILLIAM G. OTIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.6 feet from side lot line, on property located at 1203 Westgrove Boulevard, Tax Map Reference 93-2((5))(6)10, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 20, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,347 square feet.

4. The applicant has met the nine required standards for the granting of a variance; in particular, the lot is narrow.
5. The applicant is merely enclosing an existing structure.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (enclosure of screened porch) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated September 1, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 28, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 440, February 20, 1996, (Tape 1), Scheduled case of:

8:00 P.M. UPPER OCCOQUAN SEWAGE AUTHORITY (UOSA), VC 95-Y-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit maximum building height for dewatering and drying building to 82 ft. instead of 60 ft. maximum allowed. Located on the W. side of Ordway Rd., approx. 700 ft. W. of its intersection with Compton Rd. on approx. 471.12 ac. of land zoned R-C and WS. Sully District. Tax Map 64-4 ((1)) 5, 6, 15-22; 65-3 ((1)) 75, 77, 78; 73-2 ((1)) 2, 3A; 74-1 ((1)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The agent, Millard H. Robbins Jr., 9000 Williams Road, Manassas, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She said the applicant was requesting a 22 foot variance in order to construct a building 82 feet high in a zoning district that allows a maximum height of 60 feet.

Mr. Robbins, Executive Director of the Upper Occoquan Sewage Authority, introduced Jack Rinker, the consulting engineer, and Dexter Odin, legal counsel. He referenced the statement of justification submitted with the application which addressed each of the required standards. Mr. Robbins discussed an overhead aerial photograph of the subject property and noted that due to the growth of the County as well as the surrounding jurisdictions it was necessary to expand the facilities. He said the building in question would set in the rear of the site and would be located approximately 3,000 feet from the nearest point on Compton Road and approximately 3,800 feet from the nearest point on Ordway Road. Mr. Robbins explained the process used at the facility.

Mr. Hammack asked if the building height could be reduced. Mr. Robbins said there is quite a bit of head space which is necessary to allow for the removal of the equipment, weighing several thousand pounds, by bridge cranes during maintenance; thus, it could not be lowered.

There were no speakers in support of the application and Chairman DiGiulian called for speakers in opposition.

Ron Coleman, 6939 Confederate Ridge, Centreville, Virginia, and Krissa Vanhoorebeke, President of the Confederate Ridge Community Association, 14707 General Lee Drive, Centreville, Virginia, came forward. The speakers expressed concerns with regard to entrance to the site, the service roads, and how much common area would be eliminated. The Board pointed out that the only issue before the BZA dealt with the building height. Ms. Vanhoorebeke questioned where the building would be visible from Compton Road. Mr. Robbins came forward to respond.

Ms. Vanhoorebeke discussed the possibility of relocating the overhead power lines which currently bisect the Confederate Ridge development. Chairman DiGiulian said that issue needed to be discussed with the applicant in a separate forum as it was not within the Board's jurisdiction. Mr. Robbins said to his knowledge there was no verbal agreement, but added that UOSA would discuss the issue with the neighbors.

Mr. Robbins waived rebuttal and said UOSA was always happy to work with the neighbors.

The public hearing was closed.

Mr. Hammack made a motion to grant VC 95-Y-129 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated February 20, 1996

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-129 by UPPER OCCOQUAN SEWAGE AUTHORITY (UOSA), under Section 18-401 of the Zoning Ordinance to permit maximum building height for dewatering and drying building to 82 feet instead of 60 feet maximum allowed, on property located at West side of Ordway Road, approximately 700 feet west of its intersection with Compton Road, Tax Map Reference 64-4((1))5, 6, 15-22; 65-3 ((1))75, 77, 78; 73-2((1))2, 3A; 74-1((1))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 20, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is approximately 471.12 acres.
4. The applicant has met the nine required standards for the granting of a variance; in particular, the design requirements of the building require a height above the 60 feet allowed in the Ordinance as a matter of right.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific dewatering and drying building (U) shown on the plat prepared by CH2M Hill and certified by Jack E. Rinker, dated July 1994 and revised September 29, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 28, 1996. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. KATHY AND LARRY PATTERSON, Appeal 95-V-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the appellants are parking a dump truck in a residential district in violation of the Zoning Ordinance provisions. Located at 4021 Colonial Ave. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((2)) 16. (DEF. FROM 11/21/95)

Chairman DiGiulian said the notices were not in order and noted that staff was recommending that the appeal be dismissed. Jane Kelsey, Chief, Special Permit and Variance Branch, apologized on behalf of William Shoup, Deputy Zoning Administrator, who was unable to be present due to a scheduling conflict.

Kathy Patterson, 4021 Colonial Avenue, Alexandria, Virginia, explained why the notices were not mailed to the abutting property owners for the two scheduled public hearings. She said her husband drives an 18-wheeler and is away from home for long periods of time and she is a mother, a full time student, and has no other place to park the truck. Ms. Patterson said the neighbors have no objections to the truck.

Mr. Ribble said under the circumstances he would move to continue the matter for two weeks and allow the appellant an opportunity to meet the notice requirement. He suggested that the appellant contact Supervisor Hyland's office for assistance.

Ms. Kelsey said staff recommended April 2, 1996. The appellant agreed to the suggested date. Mr. Ribble so moved. The motion was seconded by Mr. Hammack who informed the appellant that the

Page 448, February 20, 1996, (Tape 1), KATHY AND LARRY PATTERSON, Appeal 95-V-046,
continued from Page 447)

hearing will go forward on that date since there was a pending violation. The motion carried by a vote of 7-0.

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Page 448, February 20, 1996, (Tape 1), Scheduled case of:

Approval of Resolutions from the February 13, 1996

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 448, February 20, 1996, (Tape 1), Scheduled case of:

Approval of October 3, 1995, and January 16, 1996, Minutes

Mr. Hammack made a motion to approve the Minutes as submitted by staff. Mr. Pammel asked that page 13 of the January 16, 1996, Minutes be corrected to clarify that the motion to grant had failed. Mr. Ribble seconded the motion with the noted correction and the motion carried by a vote of 7-0.

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Page 448, February 20, 1996, (Tape 1), Scheduled case of:

Request for Additional Time for Dennis F. Ratner, VC 93-D-033


Mr. McPherson made a motion to approve the applicant's request for additional time. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date is March 22, 1997.


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As there was no other business to come before the Board, the meeting was adjourned at 8:38 p.m.

Minutes by: Betsy S. Hurtt

Approved on: March 26, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 27, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 449, February 27, 1996, (Tape 1), Scheduled Case of:

9:00 A.M. HELEN F. MOSS, VC 95-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 19.6 ft. and 17.6 ft. from rear lot line. Located at 1533 Malvern Hill Pl. on approx. 10,734 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((3)) 94.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and the applicant's agent, William I. Marion, complied.

David Hunter, Staff Coordinator, presented the staff report dated February 20, 1996, outlining staff's position. He stated that variances of 5.4 feet and 7.4 feet were being requested.

Mr. Marion presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. Hammack asked about the property to the rear of the deck and the porch and Mr. Hunter confirmed that it was homeowner open space, marked floodplain.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 95-D-135 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

The Board waived the eight-day waiting period at Mr. Marion's request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-135 by HELEN F. MOSS, under Section 18-401 of the Zoning Ordinance to permit construction of additions 19.6 feet and 17.6 feet from rear lot line, on property located at 1533 Malvern Hill Place, Tax Map Reference 11-3((3))94, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant(s) is/are the owner(s) of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 10,734 square feet.

4. A substantial area of the front yard is taken up with the pipestem driveway and the house is situated to the rear of the lot, leaving very little developable space to the rear under the Zoning Ordinance.
5. The deck and additions proposed are reasonable in size and the variances requested are minimal and do not appear to adversely impact any other property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific room and sunroom additions shown on the plat prepared by Kenneth W. White, Alexandria Surveys dated November 10, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 451, February 27, 1996, (Tape 1), HELEN F. MOSS, VC 95-D-135, continued from Page 450

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 27, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 451, February 27, 1996, (Tape 1), Scheduled Case of:

9:00 A.M. JOHN R. & ALICE W. ROSS, VC 95-H-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.67 ft. high to remain in the front yard. Located at 1609 Sereno Ct. on approx. 25,086 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((16)) 28.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Ross complied.

Heidi Powell, Staff Coordinator, presented the staff report dated February 20, 1996, outlining staff's position. She stated that a variance of 2.67 feet was being requested.

Mr. Ross presented his request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. McPherson asked for the copy of a map that the applicant said had been given to him by Stanley Manolis of the Zoning Enforcement Branch; the applicant proceeded to look for the document and subsequently provided it.

In the interim, Mr. Hammack asked staff about the statement by the applicant that the neighbor on Lot 27 could build the fence legally in the location that the applicant proposed, if it were on the other side of the property line, and he asked staff to comment. Ms. Powell said that was correct because the fence would be south of the front of the neighbor's house and the house is closer to the building restriction line; however, the maximum allowable height would be 6 feet.

There were no speakers in support of the application.

The following people spoke in opposition to the application: Mario Asta, 9840 Squaw Valley Drive, President of Sun Valley Community Association; Brandon Lee, 1611 Sereno Court; Mike Byard, 1616 Sereno Court; and Ileen Garvey, 1725 Asoledo Lane, a member of the Board of Directors of the Association.

Some comments and concerns of speakers were: The applicant's proposal did not pass the review process of the Association, which the applicant helped to develop when he sat on the Board of Directors, and he did not accept the suggested changes; one of the changes suggested was that the entire fence be constructed of board-on-board design or a row of shrubs; the chain link fence proposed by the applicant was against Association guidelines; the applicant did not submit final plans to the review panel before beginning construction of the fence; the applicant was asked to obtain the cooperation of the adjacent neighbor, who could build the fence by right, in his proposed endeavors and he did not do so; some of the applicant's complaints about neighbors concerned a neighbor who was no longer there; neighbors alleged that reported complaints were not valid, including those about dogs; the adjacent neighbor proposed mutual planting of trees instead of the proposed fence; the applicant has a lot of time on his hands and the complaints are fabrications; visual impact; decreased property values; the variance application would not solve the problems reported by the applicant and did not support the need for the fence; an alleged report filed by Police did not exist; a video of the subdivision showed no fences in the front yards, a drainpipe lying on the applicant's property marking the applicant's property line, which has been there for some time, and trash on the applicant's property; the Association denied having not responded to complaints from Mr. Ross.

Mr. Ross came forward for rebuttal and submitted photos to the Board, acknowledging that the present

next-door neighbor was not responsible for the complaints against the previous owner. He said he complained to the Association Board and no written reply was made; he said he verbally agreed not to put up a chain link fence. The applicant said a chain link fence was put up on the property to his rear four years ago when Ms. Garvey was in charge of enforcement, as shown on photos. He said the chain link fence was subsequently taken down and thrown on the back lot of the next-door neighbor on Charnita Court, as shown on photos, and represented trash. The applicant reported infractions by neighbors.

There were no other speakers and Chairman DiGuilian closed the public hearing.

Mr. Pammel moved to deny VC 95-H-133 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-133 by JOHN R. & ALICE W. ROSS, under Section 18-401 of the Zoning Ordinance to permit fence 6.67 feet high to remain in the front yard, on property located at 1609 Sereno Court, Tax Map Reference 28-1((16))28, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant(s) is/are the owner(s) of the land.
2. The present zoning is R-1.
3. The area of the lot is 25,086 square feet.
4. Testimony indicated that the request was a matter of convenience.
5. The critical issue is that a variance would violate a provision clearly set forth in the Homeowners Association covenants regarding fences in the front yards.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Dively seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 1996.

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9:00 A.M. WILLIAM K., JR. & MARTHA ANN ROMOSER, VC 95-Y-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 37.6 ft. from front lot line. Located at 3010 Fox Mill Rd. on approx. 7.00 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((1)) 30 and 31B.

Chairman DiGiulian called for the scheduled case and was advised by Jane C. Kelsey, Chief, Special Permit and Variance Branch, that it was necessary to readvertise the application for a public hearing on March 12, 1996, because of an additional variance that had been overlooked.

Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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9:00 A.M. KEITH W. & PHYLLIS P. SHERPER, VC 95-M-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 3252 Juniper Ln. on approx. 30,519 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((3)) 39A. (DEF. FROM 12/5/95 AT APPLICANT'S REQUEST). (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED).

Chairman DiGiulian called for the scheduled case and was advised by Jane C. Kelsey, Chief, Special Permit and Variance Branch, that the applicants had requested further deferral until April 1, 1996, because they had to do some additional work, and staff had no objection.

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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9:00 A.M. JOHN H., JR. & CLAIRE G. WILLIAMS, VC 95-B-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from rear lot line. Located at 4405 Holborn Ave. on approx. 10,938 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((7)) 140.

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Mr. Williams complied.

Susan Langdon, Staff Coordinator, presented the staff report dated February 20, 1996, outlining staff's position. She stated that a variance of 17.5 feet was being requested.

Mr. Williams presented his request and statement of justification, previously submitted in writing and incorporated into the record.

Mr. McPherson moved to grant VC 95-B-134 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-B-134 by JOHN H., JR. & CLAIRE G. WILLIAMS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.5 feet from rear lot line, on property located at 4405 Holborn Avenue, Tax Map Reference 70-1((7))140, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant(s) is/are the owner(s) of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 10,938 square feet.
4. The location of the house on the property and the shape of the lot are unusual.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific addition (screen porch) shown on the plat prepared by Delashmutt Associates Ltd., dated September 27, 1995, revised November 20, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. NOVA BILLIARDS AND CAFE, INC., SP 95-Y-061 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 13975 Metrotech Dr. on approx. 4.90 ac. of land zoned C-8, HC, AN and WS. Sully District. Tax Map 34-4 ((1)) 16B. (DEF. FROM 11/28/95 FOR NOTICES). (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED).

Chairman DiGiulian called for the next scheduled case and Susan Langdon, Staff Coordinator, advised that the notices were not in order. In addition, several weeks ago, the Zoning Enforcement Branch had notified her that the applicant had been in violation by already operating the billiard hall. She said that,

Page 454 February 27, 1996, (Tape 1), NOVA BILLIARDS AND CAFE, INC., SP 95-Y-061, continued from Page 453

since that time, the applicant had been evicted from the shopping center and she had been unable to reach the applicant because the phones had been disconnected. Ms. Langdon said the applicant had not contacted staff.

Mr. Pammel moved that, given the circumstances reported by staff, the case should be dismissed. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 456, February 27, 1996, (Tape 1), Scheduled Case of:

9:00 A.M. YOUTH APOSTLES INSTITUTE, INC., SP 95-D-044 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a convent. Located at 1600 Carlin Ln. on approx. 2.00 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 ((1)) pt. 25A and pt. 27. (ASSOCIATED WITH RZ 95-D-040). (MOVED FROM 12/19/95). (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED).

Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and Lynne J. Strobel, Agent, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, complied.

Phyllis Wilson, Staff Coordinator, presented the staff report dated October 31, 1995, outlining staff's position. Staff recommended approval of the application, subject to the revised Proposed Development Conditions dated December 28, 1995.

Ms. Strobel presented the applicant's request and statement of justification, previously submitted in writing and incorporated into the record. She referenced the Zoning Administrator's original determination that the use was similar to that of a convent.

Harry Backus, 1534 Poplar Place, President of the Brookehaven Forestville Civic Association, said he and many of the neighbors objected to the term of the word "convent" to describe the use; he believed it was a group housekeeping unit. A discussion ensued among staff, the Board members and Mr. Backus, resulting in a decision that the use would be described as previously determined by the Zoning Administrator. Mr. Pammel noted that the thirty-day appeal period had expired without any appeal. Mr. Dively asked the speaker if there was any great concern about anything other than the term describing the use and he said no.

Ms. Strobel said it had been very difficult to categorize the use because it was unique in Fairfax County; however, the Zoning Administrator had determined that convent most closely described the use, according to the Zoning Ordinance. She said the applicant was not averse to changing the descriptive term.

Mr. Ribble moved to grant SP 95-D-044 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Pammel commented that he would bow to the judgement of the Zoning Administrator. He said his duties involved working with a Zoning Ordinance five days a week or more and he knew that it was impossible to describe every possible conceivable use that a property might be have accorded to it. Mr. Pammel said it was the Zoning Administrator's function to make interpretations where similarities occurred and a particular use was not listed in the Zoning Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-D-044 by YOUTH APOSTLES INSTITUTE, INC., under Section 3-103

of the Zoning Ordinance to permit a convent on property located at 1600 Carlin Lane, Tax Map Reference 31-3((1))pt. 25A and pt. 27, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant(s) is/are the contract purchaser/lessee of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 2.0 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to the other land.
- 2. This Special Permit is granted only for the purpose(s), structure(s) and/or uses(s) indicated on the special permit plat prepared by VIK A Incorporated, dated September 21, 1995, as revised through November 28, 1995, and approved with this application, as qualified by these development conditions.
- 3. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 4. Group use of the outdoor meditation area shall be limited to the hours between 8:00 A.M. and 9:00 P.M.
- 5. On-site parking spaces for the convent shall be provided in conformance with that shown on the Special Exception Plat dated November 28, 1995.
- 6. No more than twenty-one (21) vehicles shall be parked on site at any given time. If on-site activities require vehicle parking in excess of twenty-one (21), the Youth Apostles Institute shall arrange for alternative off-site parking, not to include residential streets. A sign shall be posted near the entrance to the convent building which states that parking on the residential streets shall not be permitted, and stating where parking may be available.
- 7. A program to encourage and assist with the organization of residents' and visitors' car pools shall be instituted and maintained indefinitely.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required Residential Use permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 458, February 27, 1996, (Tape 1), Scheduled Case of:

9:30 A.M. MOST REV. JOHN R. KEATING, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VA., AND HIS SUCCESSORS IN OFFICE/HOLY SPIRIT PARISH, SPA 85-A-007-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-A-007 and SE 88-A-046 for church and related facilities and school of general education to permit church and related facilities, with school of general education with an enrollment of 100 or more students daily and building addition. Located at 8800 Braddock Rd. on approx. 15.32 ac. of land zoned R-1. Braddock District. Tax Map 70-3 ((1)) 5 and 5B; 69-4 ((4)) 1-4.

Chairman DiGiulian advised that there was a copy of a letter withdrawing the application in the Board's package.

Mr. Pammel so moved. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 458, February 27, 1996, (Tape 1), Scheduled Case of:

9:30 A.M. LOWELL FINE, ETHEL FINE, Appeal 95-L-073 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants are maintaining outside storage in excess of 100 sq. ft., not contained to the rear half of the lot and not screened from a neighboring dwelling and are maintaining a junk yard for unlicensed and dismantled automobiles, all in violation of the applicable provisions of the Zoning Ordinance. Located at 5908 Erving St. on approx. 8,702 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (20) 5.

Chairman DiGiulian said he noted that the agenda stated that the notices were not in order.

William E. Shoup, Deputy Zoning Administrator, said that was true and the appellant was present to address the appeal.

Lowell Fine came to the podium and said they would like to try to bring the property into compliance and then have it reinspected. He asked to have the appeal deferred for that reason. Mr. Fine said the issue was two vehicles on the property which were not licensed and allegedly not in compliance. Chairman DiGiulian asked the appellant if the suggested deferral date of April 30, 1996 was satisfactory and he said it was.

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 459, February 27, 1996, (Tape 1), Scheduled Case of:

9:30 A.M. ALLAN R. FAGAN, Appeal 95-P-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination than an enclosed addition constructed without Zoning Administrator approval of a Building Permit and in conflict with the minimum rear yard requirement continues to be in violation of Zoning Ordinance provisions. Located at 2532 Herrell Ct. on approx. 1,416 sq. ft. of land zoned R-5. Providence District. Tax Map 49-2 ((23)) 14A. (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED).

Chairman DiGiulian said he also had a letter requesting withdrawal of this application. Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 459, February 27, 1996, (Tape 1), Scheduled Case of:

9:30 A.M. CHRISTOPHER R. KLOMAN AND PAMELA B. KLOMAN , Appeal 95-D-063 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants have erected an accessory storage structure exceeding 8½ ft. in height closer to the side and rear lot lines than allowed under Par. 10E of Sect. 10-104 of the Zoning Ordinance. Located at 1403 Kurtz Rd. on approx. 22,653 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((14)) 19. (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED).

Mr. Kloman came to the podium and identified himself.

William E. Shoup, Deputy Zoning Administrator, presented the staff report and referenced photos depicting the shed, which were then being viewed by the Board.

Mr. Dively asked the appellant why he had not filed for a special permit. Mr. Kloman replied that his understanding, after talking with Mr. Sacco that a special permit was not necessary. He said he did not know enough about zoning at that point to ask any other questions and the shed was erected. If Mr. Dively was asking why a special permit was not filed after the fact, he said it was his understanding that he could appeal and that a special permit was fairly expensive.

Mr. Dively asked the appellant if he understood that different standards were applied to appeals than were applied to special permits; the appellant said he was not sure he understood. Mr. Dively asked staff what the cost of a special permit application would be and William E. Shoup said the filing fee would be \$110, plus the cost of the required certified plat which probably would cost a couple of hundred dollars.

Mr. Kloman presented his appeal, previously submitted in writing and incorporated into the record. He requested that the BZA allow the shed to remain.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he did not believe that the Zoning Administrator's position was incorrect. He believed the decision to be proper. He said he was concerned about citizens not knowing how the County operates. Mr. Pammel expressed a desire to have information properly disseminated to citizens seeking specific knowledge about procedures.

Mr. Pammel moved to uphold the determination of the Zoning Administrator. He further said he would like to see the appellant file an application for a special permit for a building in error and he said the Board would be amenable to that type of application.

Mr. Kelley seconded the motion and said he would vote for a special permit in this case.

The motion carried by a vote of 7-0.

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Page 460, February 27, 1996, (Tape 1), Action Item:

Approval of Resolutions from February 10, 1996 meeting

Mr. Ribble so moved. Mr. Pammel seconded the motion which carried by a vote of 7-0

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Page 460, February 27, 1996, (Tape 1), Action Item:

Request for Additional Time
Rajdhani Mandir Temple, SPA 87-S-012-2
New expiration date: February 6, 1997

Mr. McPherson said he believed there should be a reasonable time limit set on cases such as this. He said he was concerned that too much additional time was being granted and referenced a recent case where additional time had been granted two or three times and it was about four years old. Chairman DiGiulian remembered several cases when staff had recommended denial of additional time when they believed additional time was not warranted. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that staff usually checked to see if a site plan had been filed and if the application had been diligently pursued before making their recommendation to the Board. She said that, in this instance, the site plan had come in; it needed to have several changes but it appeared to be close to approval.

Mr. Pammel said he knew that the applicant also found it necessary to retain another engineering firm because of some problems and he believed there was a legitimate reason for requesting additional time. He so moved.

Mr. Hammack concurred with Mr. McPherson's comments and said that ten years time to establish a use, especially an institutional use, appeared to need review. Ms. Kelsey pointed out that the use had been established in 1991 and, originally, a different church was involved. Mr. Hammack said he would support another year of additional time. The motion carried by a vote of 7-0.

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Page 460, February 27, 1996, (Tape 1), Action Item:

Request for Additional Time
George Nixon Summers, VC 86-D-061
New expiration date: January 19, 1997

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that staff recommended additional time, noting that the case had been continued since 1986. She said she had spoken with Mr. Runyon some time ago when the plat he said he submitted did not reach staff. Ms. Kelsey said this was part of a two-part request and an interpretation was pending regarding the variance from Barbara A. Byron, Director, Zoning Evaluation Division.

Mr. Hammack said he had made the original motion and the topography was extreme. He said that, if there was work in progress, it seemed appropriate to grant another year of additional time. He so moved.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 460, February 27, 1996, (Tape 1), Action Item:

Out-of-turn hearing request
JAMES GEDDES, JR., VC 96-P-015
Currently scheduled for April 30, 1996

A discussion ensued among the Board members and Jane C. Kelsey, Chief, Special Permit and Variance

Page 461, February 27, 1996, (Tape 1), JAMES GEDDES, JR., VC 96-P-015, continued from Page)

Branch, regarding availability of an earlier date to schedule this case, based upon the number of cases already scheduled, the legal notice requirements, and the availability of the Board Room. After considering all contributing factors, it was decided that the out-of-turn hearing could not be granted.

Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 461, February 27, 1996, (Tape 1), Action Item:

Special Permit Application SP 95-S-054
Variance Application VC 95-S-094
JERRY D. & KAREN STONE
Revised plat required
Heard 1/23/96

Chairman DiGiulian reviewed the decision to modify the extent of coverage in the rear yard, subject to submission of a revised plat showing that there would be no encroachment on the School Board property. He said the plat showed that there was encroachment onto School Board property of about 1.0 feet. He suggested deferring acceptance until the applicant obtained permission from the School Board to allow the encroachment.

Mr. Pammel asked if the gazebo still encroached upon the School Board property and a discussion ensued. Mr. Hammack said the applicant's agent, William Thomas, earlier told the Board that the gazebo was constructed over the original footings which they mistakenly believed were not on School Board property. Mr. Thomas had requested additional time to negotiate with the School Board.


Mr. Hammack moved to defer approval of the plat and Resolution until July 9, 1996. Mr. Pammel seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: Geri B. Bepko

Approved on: April 23, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 5, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 463, March 5, 1996, (Tape 1), Scheduled case of :

9:00 A.M. MR. & MRS. ALEX SMITH, VC 95-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and permit 6.2 ft. high fence to remain in a front yard. Located at 1312 Round Oak Ct. on approx. 13,785 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-2 ((19)) 50. (DEF. FROM 1/30/96 TO ALLOW APPLICANT OR AGENT TO BE PRESENT.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy Gardner, 7540 Fullerton Court, Springfield, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Lori Greenlief dated January 23, 1996. The applicant requested a variance of 43.0 feet to the minimum front yard requirement and a height variance of 2.2 feet for an existing fence.

The applicant's agent, Tracy Gardner, presented the applicant's request as outlined in the statement of justification.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 95-D-127 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-127 by MR. & MRS. ALEX SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 square feet and permit 6.2 foot high fence to remain in a front yard, on property located at 1312 Round Oak Court, Tax Map Reference 31-2((19))50, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 13,785 square feet.

4. The applicant satisfied the standards required for a variance.
5. The lot has a double front yard which makes it somewhat unusual and would impose a restriction on the use of the property.
6. Granting the variance would not change the zoning district or the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific accessory structure and fence shown on the plat prepared by Alexandria Surveys, Inc., dated August 9, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit, if required, shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Page 465, March 5, 1996, (Tape 1), MR. & MRS. ALEX SMITH, VC 95-D-127, continued from Page 464)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

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Page _____, March 5, 1996, (Tape 1), Scheduled case of :

9:00 A.M. CHRISTOPHER & DIANA P. SMITH, VC 95-D-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.1 ft. from rear lot line. Located at 4107 N. River St. on approx. 10,569 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-4 ((22)) 125.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Smith, 4107 North River Street, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated February 27, 1996. The applicant requested a variance of 2.9 feet to the minimum rear yard requirement.

Mr. Smith presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-D-140 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 27, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-140 by CHRISTOPHER & DIANA P. SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.1 feet from rear lot line, on property located at 4107 N. River Street, Tax Map Reference 31-4((22))125, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 10,569 square feet.
4. The applicant presented testimony indicating compliance with the required standards for a variance.
5. The lot has unusual topography and is shallow in depth.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (garden room) shown on the plat prepared by Alexandria Surveys, Inc., dated December 12, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

Page 467, March 5, 1996, (Tape 1), Scheduled case of :

9:00 A.M. RALPH A. ORLANDELLA, VC 95-Y-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.8 ft. from each side lot line such that side yards total 17.6 ft. Located at 13445 Point Pleasant Dr. on approx. 9,430 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 200.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ralph Orlandella, 13445 Point Pleasant Drive, Chantilly, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Lori Greenlief, dated February 27, 1996. The applicant requested a variance of 6.4 feet to the minimum side yard requirement.

Mr. Orlandella presented the variance request as outlined in the statement of justification submitted with the application. He said the homeowners' association approved of the application. There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 95-Y-137 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 27, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-137 by RALPH A. ORLANDELLA, under Section 18-401 of the Zoning Ordinance to permit construction of additions 8.8 feet from each side lot line such that side yards total 17.6 feet, on property located at 13445 Point Pleasant Drive, Tax Map Reference 45-3((3))200, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-2 and WS.
3. The area of the lot is 9,430 square feet.
4. The proposed addition does not change the schematic of the existing footprint of the house.
5. The lot is narrow and has met the minimum 8 foot requirement.
6. The applicant met the required standards for a variance as outlined in the staff report.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or

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- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
 4. That the strict application of this Ordinance would produce undue hardship.
 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
 7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions (dining room and sun room) shown on the plat prepared by Alexandria Surveys, Inc., dated September 27, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 468, March 5, 1996, (Tape 1), Scheduled case of :

9:00 A.M. KIRK E. & JOANN U. SAUNDERS, VC 95-V-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.8 ft. from side lot line such that side yards total 11.6 ft. Located at 8463 Great Lake Ln. on approx. 7,098 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((3)) 722.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joann Saunders, 8463 Great Lakes Lanes, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated February 27, 1996. The applicant requested a variance of 4.2 feet to the minimum side yard requirement and 8.4 feet to the total side yard requirement.

Ms. Saunders presented the variance request as outlined in the statement of justification submitted with the application. She said the neighbors and the homeowners' association approved of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 95-V-141 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 27, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-V-141 by KIRK E. & JOANN U. SAUNDERS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.8 feet from side lot line such that side yards total 11.6 feet, on property located at 8463 Great Lake Lane, Tax Map Reference 98-3((3)722, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 7,098 square feet.
4. The applicant met the required standards for a variance.
5. The lot is narrow and has converging lot lines to the rear.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc. dated November 13, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 470, March 5, 1996, (Tape 1), Scheduled case of:

9:00 A.M. J.A. LOVELESS HOMES II, INC., VC 95-S-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 2 having lot width of 99.29 ft. Located at 8630 Tuttle Rd. and 6228 Garden Rd. on approx. 3.10 ac. of land zoned R-1. Springfield District. Tax Map 79-3 ((4)) 15; 79-3 ((7)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubely P.C., replied that it was.

Page 471, March 5, 1996, (Tape 1), J.A. LOVELESS HOMES II, INC., VC 95-S-138, continued from Page 470

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated February 27, 1996. A variance of 50.71 feet was required for proposed lot 2. He said that the 1995 tax map used in the staff report did not reflect the existing homes located on the south side of Tuttle Road in the R-3 area of the tax map. Mr. Hunter stated that in staff's opinion the variance request did not satisfy all of the required standards. He advised the Board of the revised proposed development conditions dated March 5, 1996.

Mr. Pammel asked if the owner of parcel 20 could develop the site as it currently stands assuming that they could avoid the easements and the minor flood plain. Mr. Hunter replied they could develop the site because it is a recorded lot.

Mr. Pammel said he did not find any indication through the environmental comments that this particular application was in violation of the Plan. Mr. Hunter said staff in the environmental branch did determine that there is minor flood plain on the property and staff would like the applicant to preserve the minor flood plain as shown on the revised variance plat.

The applicant's agent, Ms. Strobel, presented the applicant's request as outlined in the statement of justification submitted with the application. She said the applicant had no objections to the revised proposed development conditions. Ms. Strobel submitted two letters in support of the application to the Board members.

Mr. Pammel said the variance request was a creative solution to a difficult problem. He said he would like to see a little less clearing and the preservation of more vegetation. Ms. Strobel assured Mr. Pammel that the applicant would comply with the proposed development conditions.

Chairman DiGiulian called for speakers.

Eva Beale, adjacent property owner, expressed concerns pertaining to the trees and the placement of the houses on the lot. Ms. Beale said she would like for the plans to remain the same.

Ms. Strobel stated in her rebuttal that the applicant would comply with the proposed development conditions and the house would stay where it is currently located.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-S-138 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 27, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-S-138 by J.A. LOVELESS HOMES II, INC., under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 2 having a width of 99.29 feet, on property located at 8630 Tuttle Road and 6228 Garden Road, Tax Map Reference 79-3((4))15; 79-3((7))20, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.10 acres.
4. The applicant met the required standards for a variance.
5. The application presents no increase in density and any problems that exist with the application are addressed by the development conditions.
6. The applicant's letter of justification dated November 17, 1995, is a very good explanation and justification for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of two (2) lots into two (2) lots as shown on the plat prepared by William H. Gordon & Associates, Inc. and dated October 1995, revised through January 29, 1996.
2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and with the covenants, running with the land, to assure that future owners are aware of these restrictions.

- 3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
- 4. Prior to subdivision plan approval, a tree save/tree preservation plan showing the limits of clearing and grading shall be submitted for review and approval by the Urban Forestry Branch, Department of Environmental Management (DEM) and implemented. This plan shall identify, locate and preserve individual mature, large and/or specimen trees and tree save areas on the site to the greatest extent possible as determined by the Urban Forestry Branch, DEM. Emphasis shall be given toward the preservation of upland hardwood trees in the area of the EQC.
- 5. In order to preserve water quality in the Pohick Creek watershed, the Environmental Quality Corridor (EQC) buffer as shown on the variance plat shall be preserved in open space. There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading except for necessary utilities and the where necessary for the driveway for Lot 2. There shall be no structures located in the EQC area.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded within the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 473, March 5, 1996, (Tape 1), Scheduled case of :

9:00 A.M. BRUCE BENEDICT & MELANIE GEHEN, VCA 81-P-224 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 81-P-224 to permit construction of addition 6.0 ft. from side lot line and permit existing structure to remain 12.1 ft. and deck to remain 25.0 ft. from street line of a corner lot. Located at 3715 Spicewood Dr. on approx. 21,801 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((2)) 16A. (MOVED FROM 2/13/96 AT APPL'S. REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce Benedict, 3715 Spicewood Drive, Annandale, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated February 27, 1996. The applicant requested a variance of 9.0 feet to the minimum side yard requirement and 22.9 feet and 10.0 feet to the minimum front yard requirement.

Mr. Benedict presented the variance requests as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VCA 81-P-224 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 27, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VCA 81-P-224 by BRUCE BENEDICT & MELANIE GEHEN, under Section 18-401 of the Zoning Ordinance to amend VC 81-P-224 to permit construction of addition 6.0 feet from side lot line and permit existing structure to remain 12.1 feet and deck to remain 25.0 feet from street line of corner lot, on property located at 3715 Spicewood Drive, Tax Map Reference 59-3((2))16A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,801 square feet.
4. The lot is irregularly shaped and the house is placed in a lopsided sort of way and suffers from fronting both Spicewood Court and Spicewood Drive. The incursions into these lines appear not to be the fault of the applicant and because of the narrowness and the tapering nature of the property towards the back, the application has a unique circumstance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions and deck shown on the plat prepared by Rice Associates, P.C., dated October 2, 1992, and revised through October 23, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 1996. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:00 a.m. and reconvened at 10:10 a.m.

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Page 470, March 5, 1996, (Tape 1), Scheduled case of :

9:30 A.M. HARRY H. THOMPSON, Appeal 95-V-074 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant has placed two construction trailers, and is maintaining an outdoor storage area in the I-6 District without site plan and Non-Residential Use Permit approval in violation of Zoning Ordinance provisions. Located at 10117 Giles Run Rd. on approx. 1.01 ac. of land zoned I-6. Mt. Vernon District. Tax Map 113-2 ((3)) E3.

Chairman DiGiulian said in 1971 his office prepared a site plan for the subject property and in 1982 a plat was prepared to accompany a site plan waiver. He said since that time the office has not done anything on the property and does not have a business relationship with either Springfield Concrete Construction or Harry H. Thompson; therefore, he would participate in the hearing.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 26, 1996. He said the appellant added two office trailers, a storage trailer, other storage structures, and miscellaneous outside storage to the site which were not shown on the approved site plan. Mr. Shoup stated that the appellant had never obtained permanent Non- Residential Use Permit (Non-RUP) approval for the use. Photographs were presented to the Board.

The appellant's agent, Thomas Williams, presented the arguments forming the basis for the appeal. and noted that this was the second appeal filed. The first appeal was filed in response to a letter dated September 1995 which stated there was no site plan approval and that the appellant was operating a storage yard without a Non-Residential Use Permit (Non-RUP). In response, the appellant provided a

copy of the approved site plan and a copy of the letter acknowledging the existence and operation of a storage yard. Mr. Williams said following that appeal the appellant received a Sheriff's letter that rescinded the first Notice of Violation; however, another violation was issued stating that the appellant was operating contractors' offices and having trailers and storage. The letter also stated that a Non-RUP had been obtained in 1977. He said a memorandum from the County stated that a Non-RUP had been applied for but there were no records that one had been issued. Mr. Williams said the appellant obtained the appropriate licensing and permits to operate and has been operating in the County since 1968. He said the appellant applied for a Non-RUP in October of 1995 and has yet to receive a response. Mr. Williams submitted photographs of the subject property.

Mr. Dively asked were any new trailers added that were being used on a semi-permanent basis? Mr. Williams replied that there weren't any trailers that had not been on the property for at least a year and a half.

Mr. McPherson excused himself from further participating in the hearing after viewing photographs submitted by the appellant which depicted a company name that both Mr. McPherson and the appellant were associated with.

Mr. Kelley asked if the appellant had any contracts with the County. The appellant replied no, that most of his work was done as a subcontractor.

Mr. Shoup noted an error in the staff report regarding the issuance of the Non-RUP dated February 1977. He said any addition of trailers and storage needed to obtain minor site plan approval under current Ordinance provisions.

Chairman DiGiulian asked was there a requirement in 1971 that the location of the concrete curb, gutter form, trucks, and trailers be shown on the site plan. Mr. Shoup said he couldn't say that there was a requirement. The Chairman asked how could it be required now if it wasn't required then.

Mr. Kelley asked where the complaints came from. Mr. Shoup said he wasn't sure where the complaints came from but that there was concern expressed about the activities on Giles Run Road and a number of the properties contained uses with excessive storage and uncontrolled activities.

Mr. Pammel asked how many of the trailers on site were permanently anchored and were they used to be relocated to jobs that the appellant was working on. Mr. Shoup said he didn't know that any of trailers were set on the site to be easily removed and that the office type trailers were on blocks. Mr. Shoup said the trailers weren't permanently anchored but they were not placed in a manner that they could be taken on and off the site very easily.

Mr. Williams gave his rebuttal and submitted aerial photographs of the property to the Board.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said this use is an established business operating since 1968. He said various plans were filed and Non-RUP's were requested but not issued, the last one being in 1977. Mr. Pammel said one problem that concerned him was the trailers. He said the trailers had almost been like musical chairs, in certain locations at certain times and then removed and others have come back. He stated that perhaps it would be clearer if the language in the Non-RUP indicated the permission granted for the location of "X" number of temporary trailers to be used for whatever purpose they are being used for. Mr. Pammel said there was no inconsistency with the plan for this area and the way the property was being used was certainly in the fashion similar to the neighbors. Mr. Pammel said his interpretation of a contractor would include accessory and incidental uses, although not indicated on the plan, but that would include storage that is needed for the contractor to conduct his business. Therefore, he moved that the Board reverse the opinion of the Zoning Administrator with respect to Appeal 95-V-074, Harry H. Thompson.

Mr. Kelley seconded the motion. He noted that as far as he could see in the record, the appellant made every effort to comply with the County Ordinance and regulations.

Mr. Hammack said he would oppose the motion even though there was a lot of merit to the motion. He said he was not sure that the appellant had done everything required and that the County had failed to do some things. He said that does not preclude the County from trying to bring the appellant into compliance under the current Ordinance. Mr. Hammack said he was not convinced that the entire use was grandfathered and thought that the appellant should get a minor site plan approval.

The motion carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. McPherson abstained from participating in the hearing.

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9:30 A.M. VOYTEN & ASSOCIATES, INC., APPEAL 95-S-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination of the Director of the Office of Comprehensive Planning regarding what constitutes the submission date of a 456 Review application and that the date of appellant's original application letter did not begin the 60-day period by which the Planning Commission must act on the submission as provided in Sect. 15.1-456 of the Virginia Code. 13451 Braddock Rd. on approx. 227.93 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 12. (DEF. TO 12/19/95. (MOVED FROM 12/19/95 DUE TO BZA HEARING BEING CANCELED). (DEF. FROM 1/30/96 AT APP.'S REQUEST)

The Chairman noted a memorandum from the County Attorney's office that indicated that the Board of Zoning Appeals did not have jurisdiction on the subject appeal.

Bernie Voyten, appellant, came forward at the request of the Chairman.

The Chairman informed the appellant that the discussion would be limited to the memorandum received from the County Attorney's office.

Mr. Voyten said the testimony would show clearly to the BZA that what was being appealed was an action of the agent of the Zoning Administrator and as such they believed that the Board has statutory rights to hear appeals in those cases. The entire case originated from a Zoning opinion which we are ready to set forth and everything that come since that Zoning opinion is what we're appealing.

Mr. Shoup said it was staff's position that this appeal does not relate to the administration or enforcement of the Zoning Ordinance. He said under Virginia Code Section 15.1-495 and 15.1-496 the powers and duties of the BZA are set forth and the BZA is empowered to hear appeals from any order, requirement, decision, or determination made in the administration or the enforcement of this article. This article means Article 8 of the Virginia Code. Mr. Shoup said it goes on to say or any Ordinances adopted pursuant to Article 8. The Zoning Ordinance is adopted pursuant to Article 8 and Zoning Ordinance language regarding appeal, provides that an appeal can be filed by persons aggrieved by decisions made by the Zoning Administrator or other administrative officer made in the administration or enforcement of the Ordinance. He said this issue relates to a provision of Section 15.1-456 of the Virginia Code and that is set forth in Article 4 of Title 15.1 of the Virginia Code. Mr. Shoup said the 456 process is not codified in the Zoning Ordinance or in any other chapter of the County Code. Accordingly, the issue on appeal is not a decision that was made in the administration of Zoning Ordinance provisions; therefore, staff's position was that it was not subject to BZA review under the Virginia Code and the Zoning Ordinance. Therefore, staff asked that this appeal be dismissed. Mr. Shoup noted that the appellant's 456 review submission did go to the Planning Commission and they took action on February 28, 1996 to deny the proposal and there were provisions for an appeal of that determination to the Board of Supervisors.

Mr. Voyten said they entered the project at the time of site plan, pursuant to the Zoning Ordinance. He said they entered with the opinion of the Zoning Administrator's ruling on this application that a 456 would be required and it was that action that they wanted to appeal.

Chairman DiGiulian asked Mr. Voyten if he was an attorney. He replied no. The Chairman also asked if

he felt qualified to answer the questions or did he want time to obtain an attorney. Mr. Voyten said they were under advice of counsel and he was prepared to go forward.

Mr. Dively asked did staff merely make a recommendation that then was accepted by the Planning Commission, did they merely give a report, or did they make a decision that was then affirmed by the Planning Commission?

Mr. Shoup said staff had recommended denial of the application and there had been some amendments to it by Mr. Voyten and some subsequent meetings with him but eventually the Planning Commission took action to deny.

Mr. Dively asked was the Planning Commission the only entity that could make these decisions. Mr. Shoup replied yes on 456.

Mr. Pammel said Mr. Voyten got an opinion from the Zoning Administrator which said he needed certain transitional screening requirements and a 456 and that's what he is appealing. Mr. Pammel said this is a required procedure set forth in our code you can't appeal something that is required by the Code of Virginia. He said that's all the Zoning Administrator was telling Voyten & Associates and that's what Mr. Voyten was appealing. Mr. Pammel said the other issue about the lack of action was an issue that had to be responded to through the Planning Commission and the Board of Supervisors.

Mr. Shoup noted that the opinion by the Zoning Administrator was just informing the appellant that he had to seek 456 review but that decision was made on March 22, 1995 and it was not appealed.

Mr. Dively asked if this appeal was on the Planning Commission's vote.

Mr. Shoup replied this appeal was an appeal of a determination by Mr. Zook, Director, Office of Comprehensive Planning, that his submission for the 456 was not complete when it was initially submitted. He said there is a requirement in the State Code 456 provisions that says if the Planning Commission doesn't take action within 60 days it's deemed approved and the appellant sought a confirmation that had occurred. Mr. Shoup said Mr. Zook's decision was that approval had not occurred and the application was incomplete.

Mr. Dively said there was a remedy other than coming here and it was sought before the Planning Commission and they lost it's already been done.

Mr. Dively asked was the 60 day turnaround issue argued before the Planning Commission. Mr. Shoup replied no.

Mr. Hammack asked what caused the application to be incomplete.

Mr. Shoup introduced David Marshall from the Planning Division to answer the question. Mr. Marshall said the appellant argued that the 60 days began when the letter was submitted to the Office of Comprehensive Planning for a 456 review determination. He said staff argued that time began when the initial review of the application, which determines if other requirements were necessary to complete a review, was completed. Mr. Marshall said that once the internal review is completed then the application is logged with the Planning Commission office to establish the start of the 60 day clock.

Mr. Hammack asked what information was missing from the application.

Mr. Marshall said they needed more information on the noise to be generated by the bumper boats so that the environmental branch could determine the impact on the surrounding neighborhood.

Mr. Dively said that was a rather self serving interpretation.

Mr. Hammack asked did staff write to Mr. Voyten asking him for the additional information. Mr. Marshall said there was written correspondence and verbal correspondence.

Mr. Dively said that it sounded like a decision was made that had not been dealt with and that it sounded like a determination of the Zoning Administrator that should be heard by the BZA.

Mr. Kelley said he thinks Mr. Zook made a decision and in that light the BZA should hear the case.

Mr. Zook said this was in no way a determination of the Zoning Administrator. He said what Ms. Gwinn was trying to do was nothing more than advising a customer of other requirements. Mr. Zook said that staff does that frequently and it's not in the domain of the Zoning Administrator to make a judgement whether an application requires a 456 hearing. Mr. Zook said he would encourage the Board to agree with the determination of the County Attorney and let the application proceed in the form which was available for it.

Mr. Pammel said would that be an appeal to the Board of Supervisors? Mr. Zook replied yes.

Mr. Dively asked weren't they discussing the determination that the application didn't come within the 60 day rule?

Mr. Pammel said that was the issue but it falls under 15.1-456, which is not a zoning matter. He said it was clearly outside of the whole spectrum of zoning, that it was a separate section of the Code of Virginia.

Mr. Hammack said it's under the title it's just a different article and a subdivision of zoning.

Mr. McPherson asked Mr. Zook who would make the determination that the 456 application was final?

Mr. Zook said the 456 review is used by public agencies to work with a variety of other public agencies to cite public facilities in a way that is in accord with the plan. He said for a period of over 20 years, staff has been operating to work with other public agencies to get an application in shape to go forward to the Planning Commission.

Mr. McPherson asked who decides when the application is final after the 60 days has passed?

Mr. Zook said if it appears that there is not going to be a determination of the Planning Commission within that 60 day period, staff would take the matter before the County Board of Supervisors who is empowered to extend the 60 day period.

Mr. Dively asked had staff ever gone before the Board of Supervisors and said we goofed up, it's been over 60 days, it's too late?

Mr. Zook said there have been circumstances where there's a great deal of community involvement in the public hearing process, whereby the Planning Commission has not had the opportunity to work as closely as it might with the community to get the application in a position where it can meet the needs of all parties fairly. He said In some instances it takes longer than 60 days.

Mr. Dively asked had anyone ever made a determination that the 60 day rule had kicked in. Mr. Zook replied not to his knowledge.

Mr. Zook said there are a set of procedures that are not before the BZA and have been endorsed by the Planning Commission and the Board of Supervisors. He said amongst those procedures are items of information that staff can request from an applicant. Mr. Zook said one public agency is working closely with another public agency to effectuate the public good on a piece of property and in that regard additional information is needed that would be forthcoming. He said for the past 20 years, the act of filing an application is an act that the office performs with the Planning Commission Office. Mr. Zook stated that once the application is filed with the Planning Commission, they schedule the hearing, and the 60 day clock begins.

Mr. Dively said the Board was trying to read the bare bones of what was required by the Statute in the Ordinance and the public policy reasons behind that don't really help. He said the Board was not present

in a legislative capacity, and it was frustrating not to get an answer on where does the buck stop as a statutory matter.

Mr. Zook said the question wasn't phrased to him as to where does the buck stop and if the concern that he was the place where they got an initial response then that's question he was answering. He said if he made a determination in his capacity of 456, it could be appealed to the Planning Commission, or to the Board of Supervisors. Mr. Zook said he was not the judicial body that made that determination and if those avenues were exhausted it could go to Circuit Court.

Mr. Hammack asked why didn't staff ask for an extension of time?

Mr. Zook said that staff didn't agree that an extension of time was needed because the application was not filed with the Planning Commission. Mr. Zook said from staff's perspective, the Virginia Code and its requirement for action in a 60 day period had not clicked and that was why they did not ask for the extension in time. He noted that during this period there were discussions going on between the applicant and staff trying to gain additional information on the particular application. Mr. Zook said during this period of time the clock was not ticking and staff was working with the applicant to frame the application in a way that it could be filed.

Mr. Voyten said he would like the opportunity to show that some of the things Mr. Zook said were factually incorrect and time to present his case.

Mr. Dively said he didn't want to hear the facts of the case until the jurisdictional issue was decided.

Mr. Pammel asked Mr. Zook was the Park Authority a co-applicant? Mr. Zook said the Park Authority was not a co-applicant but that they sent a letter supporting the content of the application.

Mr. Hammack asked what procedures were in place for a private individual within the County guidelines to make an application? Mr. Marshall said the procedures don't distinguish between public or private applicants. He said the 456 process overall deals with public agencies and bodies and that there were guidelines for what should be submitted along with the application. Mr. Marshall stated that the application is not complete until all of that information was in place.

Mr. Dively asked does the language under paragraph A of 15.1-456 where it says submission, include the application and also surrounds the agency? He asked other than common practice were there any grounds for that interpretation. Mr. Zook said there are procedures laid out, and that they should have some bearing since they have been approved by the Planning Commission and the Board of Supervisors. He said those are the practices that have been approved by legislative bodies and have been followed for an extensive period of time. Mr. Dively asked Mr. Zook if he agreed that this all revolved around the interpretation of submission to the local Commission. Mr. Zook said he would have to consider the other issues cited by the County Attorney.

Mr. Hammack said he was concerned about what constitutes submission. He said with typical variance applications some applicants don't submit everything that's required and the Board has never held the County absolutely to the day the guy comes in and fills out a form, yet, in this case, to have all of the County agencies have to review it before you can submit it is a pretty far reach. Mr. Hammack said he agreed with Mr. Dively and because there are guidelines the application shouldn't have to circulate through the County for six months before people determine whether the application is proper.

Mr. Zook said the Office of Comprehensive Planning requested information prior to circulation to other agencies that was not forthcoming during what Mr. Voyten argued was the 60 day period.

Mr. Hammack said the general assembly seems to want it heard in a very fast period of time and they wouldn't have included a 60 day provision and actually added the language that the appeal should be heard and determined in 60 days from its filing if they didn't mean it. He said its a fairly strict standard but it gives the Commission an out by extending the time.

Mr. Zook said that provision is so the Board of Supervisors, in its capacity to provide public facilities, is not hampered by a lack of approval and the 456 or lack of action by the County Planning Commission. He said that Code section further allows that same Board of Supervisors the flexibility to give the additional time to the Planning Commission, if that the additional time is necessary.

Mr. Hammack said if there's no action that says the application is approved and anyone who wants to appeal a decision of the Zoning Administrator has to do it within 30 days. He said the Board does not cut them any slack on that at all. He said the appellant should have an opportunity to address the issue of our jurisdiction to hear this and that he wouldn't mind going back reading the Code section and going through the appeal again before voting on it one way or the other.

Mr. Dively said there seems to be a lot of discussion about what the term submission means and it is appropriate for the Board to decide what the term submission means. He said the County Attorney has a reasonable argument but if the Board accepts jurisdiction both sides have to be allowed to carry on the argument. Mr. Dively made a motion to accept jurisdiction on this matter. He stated that the Board had heard most of the underlying arguments it would be appropriate to come before the Board for interpretation.

Mr. McPherson seconded the motion. The motion carried by a vote of 6-1 with Mr. Pammel voting nay.

Mr. Shoup said the issues had already been discussed on what constituted a submission.

Mr. Voyten presented the arguments forming the basis for the appeal. He presented a list of exhibits all of which were contained in the staff report with the exception of exhibit one, which chronologically showed the timing of the project. He said the application was approved by the Park Authority prior to its submission. Mr. Voyten said the complete application was submitted on June 30, 1995, in accordance with the County's procedures. He said 60 days thereafter they requested that the Director of Comprehensive Planning affirm the statutory approval of the application, as required by Section 15.1-456. He said Mr. Zook denied the request stating that he disagreed and was not bound to respond to our application as set forth in Section 456. He noted that during the entire review they did not receive correspondence or communication from staff. Mr. Voyten said staff informed him that the application was not accepted until late October 1995 which is 116 days after its original submission. He said they filed a timely and complete application with the Commission and they failed to act within the time frame stipulated by law; thereby, statutorily affirming approval of the application.

Chairman DiGiulian asked Mr. Voyten if he had any contact with the County either verbal or written within the 60 days of the original submission. Mr. Voyten replied no. The Chairman said if there was deficiencies in the application you didn't know about them until after the 60 days had gone. Mr. Voyten replied yes.

David Jillson, OCP, said he wanted to address the issue the appellant raised regarding the question of staff contact during the 60 day period. He said on two occasions during that period he attempted to make contact. Mr. Jillson said on August 11, 1995 he attempted to call the appellant to discuss the additional information required and was not able to speak with Mr. Voyten but that he left a message on the phone answering machine. He said on August 31, 1995 he spoke with Mr. Voyten and explained to him the request for the information and he subsequently provided that information which they received later.

Mr. Kelley asked was it customary to do this by phone? Mr. Zook said it is customary when you're trying to get an application filed correctly. He said staff has preapplication meetings where they verbally tell people what they need to do to complete their application and then the ball is in their court to take that action. Mr. Zook said Mr. Voyten was told that a noise study was necessary and the application wasn't complete without it. He said they acted appropriately with regard to acceptance of the application.

Mr. Marshall said during the process staff were in discussions with the Park authority about co-sponsoring the support for this project. He said they did not received anything in writing from the Park authority until August 28, 1995. In Mr. Voyten's rebuttal he stated that each issue was addressed with regard to the submission of the application.

Page 482, March 5, 1996, (Tape 1&2), VOYTEN & ASSOCIATES, INC., APPEAL 95-S-060, continued from Page 481

In response to Chairman DiGiulian's question, Mr. Voyten replied that he was not contacted by the County pertaining to the deficiencies in the application neither written nor verbally as Mr. Jillson had stated.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the crux of the issue is that the Board reverse the decision of the Director of Planning. He noted that the Director of Planning is not the Zoning Administrator. Mr. Pammel said the Director of Planning operates and makes determinations under Article 4 which has nothing to do with the Zoning Ordinance but it deals with the Comprehensive Plan and based on that the Board does not have jurisdiction on this matter. Mr. Pammel said he was concerned with other aspects and would like to address those issues after the motion was acted upon. He made a motion to uphold the position of the Zoning Administrator with respect to Appeal 95-S-060. The motion was not seconded.

Mr. Dively said Mr. Zook argued persuasively on the underlying issues which was the interpretation of the statute. He said the language of the statute is *submission* to the Board; he said the language is *not filed or applied*. Mr. Dively said submission to the Board is a fluid enough term that it should be interpreted in the light of standard operating procedures. He said it is not the position of the Board to try to rewrite the standard operating procedures that are followed and they don't seem to have been applied arbitrarily or capriciously. Mr. Dively said they seemed to have been applied fairly reasonably. He moved to uphold the decision of the Zoning Administrator based on the fact that the application was submitted in a timely fashion. Mr. Hammack seconded the motion.

Mr. Dively rephrased his statement by saying that the Director of Comprehensive Planning did not make an erroneous decision regarding the 60 day time limit and that it went before the Planning Commission in a timely manner.

Mr. Hammack said Zoning should come up with new procedures and figure out a new way to handle these applications. He said the County should have something done to the Ordinance to set forth the procedures in the Code. Mr. Hammack said 60 days is awfully long and it seemed to be inconsistent what the Code would arguably require. He said he agreed with Mr. Dively that there wasn't any indication that the procedures followed in this case were being applied arbitrarily. Mr. Hammack said the Board should uphold the decision of the Zoning Administrator.

The motion carried by a vote of 4-3. Chairman DiGiulian, Mr. Ribble, and Mr. Kelley voted nay

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Page 482, March 5, 1996, (Tape 2), Action Item:

Approval of February 27, 1996 Resolutions

Mr. McPherson moved to approve the February 27, 1996 Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 482, March 5, 1996, (Tape 2), Action Item:

Approval of December 12, 1995 and February 6, 1996 Minutes

Mr. McPherson moved to approve the December 12, 1995 and February 6, 1996 Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 483 March 5, 1996, (Tape 2), Action Item:

Change in Permittee
Ravensworth Baptist Church/NVCC, SP 92-B-009

Mr. Hammack moved to approve the Change in Permittee for SP 92-B-009. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new name will be Ravensworth Baptist Church/Annandale Play Care II.

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As there was no other business to come before the Board, the meeting was adjourned at 11:42 a.m.

Minutes by: Regina Thorn

Approved on: May 7, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 12, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:08 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 485, March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CARLOS E. KRUYTBOSCH, VC 96-D-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 1608 Wrightson Dr. on approx. 10,500 sq. t. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 105.

The applicant was not present in the Board Auditorium and the Board of Zoning Appeals passed the case over until the end of the agenda to allow the applicant an opportunity to appear.

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Page 485, March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM K., JR. & MARTHA ANN ROMOSER & RJL ASSOCIATES, INC., VC 95-Y-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow dwelling to remain 37.6 ft. from front lot line. Located at 3010 Fox Mill Rd. on approx. 7.00 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((1)) 30 and 31B. (MOVED FROM 2/27/96 FOR NOTICES).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Andres I. Domeyko, PE, 1312 Kingston Avenue, Alexandria, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said this application had been deferred from February 27, 1996, to allow an advertising error to be corrected. She said the applicant was requesting approval to subdivide Lot 30 and 31B into three lots by right and as a result was dedicating frontage along Fox Mill Road. The dedication will place the existing house, which will be located on proposed Lot 2, within 37.6 feet of the new front lot line in a zoning district which requires a minimum distance of 40 feet; thus, the applicant was requesting a variance of 2.4 feet. Ms. Kelsey said the background of the property was outlined on page 2 of the staff report.

Mr. Domeyko said he had no additional comments, but that he would be glad to answer any questions the Board might have.

Mr. Hammack asked if the dedication had necessitated the need for the variance. Mr. Domeyko replied in the affirmative.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 95-Y-139 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 5, 1996. The Board waived the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-Y-139 by WILLIAM K., JR., AND MARTHA ANN ROMOSER, under

Page 486, March 12, 1996, (Tape 1), WILLIAM K., JR. & MARTHA ANN ROMOSER & RJL ASSOCIATES, INC., VC 95-Y-139, continued from Page 485)

Section 18-401 of the Zoning Ordinance to permit dwelling to remain 37.6 feet from front lot line, on property located at 3010 Fox Mill Road, Tax Map Reference 36-3((1))30 and 31B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 7.00 acres.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the frontage dedication required in connection with the resubdivision places an existing house in a location that requires a 2.4 foot variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific dwelling shown on the plat prepared by Bowman Consulting Group, dated September 23, 1995, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting. The Board of Zoning Appeals waived the eight day waiting period.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 12, 1996. This date shall be deemed to be the final approval date of this variance.

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Page ~~487~~ March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BRENDAN P. & CHRISTINA A. KENNEDY, VC 95-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from front lot line. Located at 7409 Windy Hill Ct. on approx. 16,547 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 30-1 ((26)) 5. (DEF. FROM 9/26/95 AT APPLICANT'S REQUEST. (DEF. FROM 12/5/95 AND 1/30/96 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christina Kennedy and Brendan P. Kennedy, 7409 Windy Hill Court, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Elaine Jensen, Staff Coordinator with the Zoning Evaluation Division.

Ms. Jensen presented the staff report and said the applicants were proposing to construct an addition 17.5 feet from the front lot line, as opposed to the required 25 feet. The applicants were requesting a variance of 7.5 feet to the minimum front yard requirement.

Ms. Kennedy said they would like to build an extra bedroom for their paraplegic son and move him from the family room that he is now using as a bedroom. Mr. Kennedy said there is no other direction in which they can build because of sewer easements and set back restrictions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 95-D-078 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 21, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-D-078 by BRENDAN P. AND CHRISTINA A. KENNEDY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.5 feet from front lot line, on property located at 7409 Windy Hill Court, Tax Map Reference 30-1((26))5, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page 488, March 12, 1996, (Tape 1), BRENDAN P. & CHRISTINA A. KENNEDY, VC 95-D-078, continued from Page 487)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 16,547 square feet.
4. The applicant presented testimony that they did meet the prescribed criteria for a variance as set forth in the Zoning Ordinance; specifically, the very unusual configuration of the lot basically precludes constructing the addition anywhere else on the lot other than that shown on the plat and requested in the variance application.
5. If the addition had been shown on the plat at the time of the zoning to the PDH zoning category, it probably would have been approved as part of the development plan.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Coldwell, Sikes & Associates dated March 30, 1995, and revised June 15, 1995, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 20, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 489, March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. DORRIS C. SYMAN, VC 95-H-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 3B having lot width of 139.15 ft. Located at 9800 Clarks Crossing Rd. on approx. 3.00 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 3.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, informed the Board of Zoning Appeals that this application had been amended which required that it be readvertised; thus, the case was rescheduled to March 26, 1996, and no action by the Board was necessary.

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Page 489, March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. RACHAEL E. & ABDULLAH ERSOZ, SP 95-L-075 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 7119 Hooes Rd. on approx. 1.50 ac. of land zoned R-1. Lee District. Tax Map 90-3 ((1)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Zia Hassan with Design Management Group, 8206 Leesburg Pike, #302, Vienna, Virginia, replied that it was.

Mr. Hassan requested that the case be deferred to allow the applicant an opportunity to address staff's concerns by completing the purchase of adjacent Lot 29 and reducing the size of the facility.

Chairman DiGiulian polled the audience to determine if there was anyone else present who wished to address the request. The following citizens came forward: Janice Kauffman, 7109 Lavendar Lane, Springfield, Virginia, owner of Lot 10; and Roy Hawkins, owner of Lot 31. Ms. Kauffman said it appeared from discussions that she has had with neighbors, there is a lot of opposition to the request. The speakers did not object to a deferral.

Mr. Pammel said he believed there was an inconsistency in the staff report wherein staff was recommending a full 7 foot barrier on the rear of the lot adjacent to Lavendar Lane. He believed the barrier would be restricted to 42 inches since the lot has double front yards.

Page 490, March 12, 1996, (Tape 1), RACHAEL E. & ABDULLAH ERSOZ, SP 95-L-075, continued from Page 489

Mr. Pammel made a motion to defer the application to the date and time suggested by staff. Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested leaving the date open since the application cannot be readvertised until it has been amended to include Lot 29. She suggested June 18th or July 16th, which are night meetings, since there appeared to be a lot of citizen concern. Mr. Pammel agreed. Chairman DiGiulian directed staff to stay within the Board's guidelines and schedule no more than three cases for either night meeting. Ms. Kelsey said presently there were no cases scheduled for either day.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 490, March 12, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SILVERBROOK CONSORTIUM LIMITED PARTNERSHIP, SP 95-V-077 Appl. under Sect(s) 3-2003 of the Zoning Ordinance to permit a community swimming pool. Located in the S.W. quadrant of the intersection of Silverbrook Rd. and Fleenor Ln. on approx. 8.93 ac. of land zoned R-20. Mt. Vernon District. Tax Map 107-4 ((1)) pt. 1A, 1B, 2 and 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Keith C. Martin, Agent, WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and said the applicant was proposing to operate a community swimming pool and associated pool house with an anticipated membership of 165 families who are residents of the neighborhood. Ms. Stagg said staff was requesting that the hours of operation be amended to reflect the hours of 9:00 a.m. to 9:00 p.m. in order to allow the surrounding homes quiet hours. She said staff recommended approval subject to the Proposed Development Conditions and staff had received no letters with respect to the application.

Mr. Martin said a swimming pool and bath house are required to be constructed on the site pursuant to rezoning application RZ 94-V-048 approved proffers. He said although the proposed use on the plan conforms to the proffers and to the proffered Generalized Development Plan, special permit approval for the pool is necessary in a conventional R-20 Zoning District. Mr. Martin agreed to all the Proposed Development Conditions, including the change in hours of operation as recommended by staff.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 95-V-077 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 5, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-V-077 by SILVERBROOK CONSORTIUM LIMITED PARTNERSHIP, under Section 3-2003 of the Zoning Ordinance to permit a community swimming pool, on property located at S.W. quadrant of the intersection of Silverbrook Road and Fleenor Lane, Tax Map Reference 107-4((1))pt. 1A, 1B, 2 and 5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page 491, March 12, 1996, (Tape 1), SILVERBROOK CONSORTIUM LIMITED PARTNERSHIP, SP 95-V-077, continued from Page 490

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-20.
3. The area of the lot is 8.93 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-2003 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, Gunston Corner, Section 4B (SW quadrant of Silverbrook Road and Fleenor Lane), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Thomas D. Rust for PHR&A, dated November, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Two (2) parking spaces shall be provided for the use of pool employees.
6. Transitional screening requirements shall be modified and the barrier requirements shall be waived on the northern and eastern portions of the site in accordance with the approval of RZ 94-V-048.
7. Landscaping on the property shall be provided as shown on the approved General Development Plan. Additional evergreens shall be planted by the applicant around the proposed pool and bathhouse to provide additional screening. The size, type and amount of additional plantings shall be determined by the Urban Forestry Branch of DEM.
8. Hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. for general pool hours, with permission for after-hours parties as follows:
 - a. Parties shall be limited to six (6) per season.
 - b. Parties shall be limited to Friday, Saturday and pre-holiday evenings. Three (3) week night parties may be permitted per year, provided written proof is submitted to the Zoning Administrator which shows that all contiguous property owners concur.
 - c. Parties shall not exceed 12:00 midnight.
 - d. The applicant shall request written permission from the Zoning Administrator for each individual party or activity at least ten (10) days in advance and receive permission prior to the party.
 - e. Requests shall be approved for only one (1) such party at a time and such requests shall be

- approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.
- f. Requests shall be approved only if there are not pending violations of the conditions of the Special Permit, and any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.
9. Use of the pool and pool house shall be limited to the residents of Gunston Corner 4B and their guests. No swim meets shall be held at this facility.
10. There shall be no parking lot lights except low bollard type which do not exceed four (4) feet in height. Lighting shall be directed onto the parking area.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 492, March 12, 1996, (Tape 1), Scheduled case of:

9:30 A.M. JERRY'S FORD, APPEAL 95-M-075 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's denial of a building permit for changes to an existing vehicle sales, rental and ancillary service establishment on the basis that such changes require special exception approval and compliance with Art. 17 (Site Plans) of the Zoning Ordinance. Located at 6510 Little River Tnpk. on approx. 8.68 ac. of land zoned C-6. Mason District. Tax Map 72-1 ((1)) 23.

Andrew Keeney, with the firm of BAKER & HOSTETLER, Washington Square, Suite 1100, 1050 Connecticut Avenue, NW, Washington, DC, represented the appellant.

William Shoup, Deputy Zoning Administrator, presented staff's position and said Pars. 1 and 2 of Sect. 9-004 provide that once a special exception is approved a Building Permit cannot be approved unless the proposal is in substantial conformance with the approved special exception. He added that once the use is established it cannot be expanded beyond what might be permitted as a minor modification without special exception amendment approval. Mr. Shoup called the BZA's attention to Attachment 8 of the staff report which noted that the appellant was proposing to add a second floor within the interior of the 25 foot building with no structural changes to the roof line or building footprint. Staff learned on Friday that the proposal is for an additional structure consisting of new walls and roof which will be added to the existing building that is presently 16 feet in height and will add 2,975 square feet of gross floor area to the existing building. He said when staff believed that the change was interior they still felt that the additional floor area and increase in the floor area ratio constituted an expansion of the use and since the special

exception was approved for just a one story building, the addition of the second story was not in conformance with the approved special exception therefore an amendment was needed. Since this is an alteration to an approved use, Article 17 (Site Plans), Sect. 17-103 requires approval of a minor site plan prior to a Building Permit being issued. He added that the appellant currently has a pending special exception amendment application which is currently being processed by the Zoning Evaluation Division and this addition could be added to that application.

Mr. Keeney said the decision before the BZA was solely the decision of December 5, 1995, made by the Deputy Zoning Administrator which stated, "... needs special exception." He said the sole issue dealt with whether the decision was or was not correct and if the decision was correct then the Building Permit should not be granted. Mr. Keeney said clearly there was no requirement for a special exception. He pointed out there is no expansion of the use, no change in the development conditions, and no violation of the current special exception and the decision was solely that a special exception application needed to be filed. Mr. Keeney said the only way the appellant was able to obtain any information as to why the decision had been rendered was to file the request under the Freedom of Information Act. He said the application for the Building Permit was tendered on August 15, 1995, and during that four months someone could have notified the appellant of the problem. Mr. Keeney said there will be no increase in the number of employees, no increase in traffic, no expansion of the use, no change in the development conditions, and no change in the building footprint. He said if all of the representations are false, staff could issue a "stop work" order. Mr. Keeney discussed the history of the special permit and special exception and said prior actions need to be taken into consideration and concluded by asking the BZA to overrule the Zoning Administrator. Mr. Pammel said the square footage will be increased, the floor area ratio will be increased; therefore, the parking will be increased. He added that under the requirements of the Code a site plan review would have to take the expansion into consideration. Mr. Keeney said if a site plan was required that would be correct, but that he did not believe it was since the primary use is not being expanded.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to overrule the Zoning Administrator in this matter as he believed the appellant's agent had testified that there had been substantial compliance. Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. McPherson was absent from the meeting.

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Page 493, March 12, 1996, (Tape 1), Scheduled case of:

9:30 A.M. J.D.A. CUSTOM HOMES, INC., APPEAL 95-H-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that Outlot A is a separate lot from Lot 28 and therefore a sewage disposal system located on Outlot A to serve a dwelling on the abutting Lot 28 is not permitted under Zoning Ordinance provisions. Located at 9516 Leemay St. on approx. 39,370 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A; 28-1 ((1)) 28. (DEF. FROM 10/3/95 AND 10/24/95 AT APP.'S REQ.)

9:30 A.M. J.D.A. CUSTOM HOMES, INC., APPEAL 95-H-065 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the lot identified as Tax Map Ref: 28-1 ((1)) 28 is not a buildable lot and enjoys no grandfathered development rights under Sect. 2-405 of the Zoning Ordinance and that the consolidation of Lot 28 and adjoining Outlot A into a single lot cannot be approved since the resultant lot would not satisfy the density requirement of the R-1 District. Located at 9516 Leemay St. on approx. 0.90 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A; 28-1 ((1)) 28.

Mr. Kelley made a motion to grant the appellant's request to withdraw the appeals. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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9:00 A.M. BAILEY'S CROSSROADS ASSOCIATES, L.P., SP 95-M-076 Appl. under Par. 3C Sect(s). 5-303 of the Zoning Ordinance to permit an indoor commercial recreation use (Laser Tag). Located at 3447 Carlin Springs Rd. on approx. 4.38 ac. of land zoned I-3 and HC. Mason District. Tax Map 62-1 ((1)) 16A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, John McBride, 9324 West Street, 3rd Floor, Manassas, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant had requested that the Development Conditions be revised to reflect the number of patrons to be "183" and an expansion of the hours of operation as stated in the memorandum dated March 6, 1996 which was before the BZA. Mr. Hunter read a portion of the memorandum which stated, "The hours of operation to the general public shall be limited to 11:00 a.m. to Midnight, Monday through Thursday, 10:00 a.m. to 1:00 a.m. Saturdays, and Sunday from Noon to Midnight. In addition, corporate, institutional, and other organized group advance reservations of the entire facility may be made to utilize the facility between the hours of 8:00 a.m. and 10:00 a.m. on Saturdays, 8:00 a.m. to Noon on Sunday, 9:00 a.m. to 11:00 a.m. on Monday through Friday, and between the hours of 1:00 a.m. and 6:00 a.m. Saturday and Sunday mornings. During these additional periods, the facility shall remain locked and closed to the public." Mr. Hunter said staff has consistently recommended the maximum hour for closing time of 2:00 a.m. for indoor recreation use; therefore, staff did not concur with the requested hours of 1:00 a.m. to 6:00 a.m. However, staff did support all other changes. He pointed out that SE 91-M-058 was approved for the property which allowed a waiver of the open space and internal peripheral parking lot landscaping requirements. Mr. Hunter said staff recommended approval of SP 95-M-076 subject to the Development Conditions contained in the staff report as modified by the applicant with the exception of the hours of operation between 1:00 a.m. and 6:00 a.m.

Mr. McBride introduced Troy Pepell, owner and operator of the Laser game facilities in Northern Virginia, and thanked Mr. Hunter for his work on the application. He said the facility in Richmond has been utilized by corporations for seminars and by church youth groups for "lock ins" to allow time for socializing and teaching. Mr. McBride noted that Friday hours had been inadvertently omitted and asked that the wording "Monday through Thursday" be amended to include Friday. He discussed the requested modifications to the Development Conditions as outlined in his letter and said the use would be visible from the Goodwin House and would have no adverse impact on any residential areas. Mr. McBride said since the advance reservation hours have been so successful in Richmond the applicant would like to provide the same service in this area; thus, the request for a modification to Condition Number 5. He named some of the corporations and churches who have used the facility in Richmond.

A discussion took place between the BZA and Mr. McBride regarding who would be using the facility during the hours of 1:00 a.m. and 6:00 a.m. and specifically how it would be supervised. Mr. Pepell came forward and explained that the facility will not be used on a regular basis during those hours and the hours could be divided among more than one church.

He said it was a very positive experience and assured the BZA that it was a drug free, smoke free, and alcohol free environment. Mr. Peple explained how the game was conducted.

There were no speakers in support of the application and Chairman DiGiulian called for speakers in opposition.

David Burke, Executive Director of the Goodwin House, said Goodwin House is a 360 resident facility and the average age of the residents is 82. He explained that the facility has independent living apartments, 58 assisted living apartments on the third floor, and a 73 bed nursing home on the second floor. Mr. Burke said the facility has been operating since 1987 and he was concerned with the noise that will be generated by the proposed use. He pointed out that the existing commercial uses close relatively early and there is generally not a problem in the evening.

Mr. Hammack and the speaker discussed the distance between the site of the proposed use and Goodwin House. The BZA asked staff to point out the location of Goodwin House in proximity to the proposed

parking lot and entrance to the facility. Jane Kelsey, Chief, Special Permit and Variance Branch, did so.

In rebuttal, Mr. McBride said he did not believe there would be any adverse impact on Goodwin House and pointed out that the commercial buildings would act as a buffer.

A discussion took place between Mr. Hammack and staff regarding the restrictions imposed on delivery trucks. Mr. Hunter said staff did not have a copy of the Noise Ordinance available, but to address specific restrictions on the adjacent special exception uses staff would need to review the individual special exceptions. In response to questions from Mr. Hammack with regard to the development conditions and the distance between the proposed use and Goodwin House, Mr. Hunter said staff agreed with the changes with the exception of the proposed hours of operation between 1:00 a.m. to 6:00 a.m. since it is staff's policy to normally recommend a closing time of 2:00 a.m. He said it appeared to be approximately 800 feet between the proposed use and Goodwin House.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 95-M-076 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with amendments to Conditions 4, 5, and 6. The Chairman said he would like to see a term added on the hours of operation for the hours of operation between 1:00 a.m. and 6:00 a.m. Mr. Kelley agreed.

Mr. McBride said if there is a term limit on all the hours it would impact the use. He said it was his understanding that any term limitation would be on the hours between 1:00 a.m. and 6:00 a.m. with the Zoning Administrator reviewing all hours of operation. Mr. Kelley did not move to amend his motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-M-076 by BAILEY'S CROSSROADS ASSOCIATES, L.P., under Section 5-303 of the Zoning Ordinance to permit an indoor commercial recreation use (Laser Tag), on property located at 3447 Carlin Springs Road, Tax Map Reference 62-1((1))16A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is I-3 and HC.
3. The area of the lot is 4.38 acres.
4. This is one of the first applications that has come before the Board of Zoning Appeals, but there is the possibility of more.
5. If the use is operating successfully in Richmond and Sterling Park, the use should be granted although the BZA was not altogether delighted with the proposal.
6. Community groups can use movie theaters, bowling alleys, etc., under similar circumstances and remain open to specific groups without restrictions.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3447 Carlin Springs Road (10,312 square feet) and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this indoor commercial recreation use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, Inc. dated November 21, 1995, revised through January 31, 1996 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. There shall be a maximum of 183 patrons in the facility, 3447 Carlin Springs Road.
5. The hours of operation to the general public shall be limited to 11:00 a.m. to Midnight, Monday through Thursday, 10:00 a.m. to 1:00 a.m., Friday and Saturday, and Sunday from Noon to Midnight. In addition, corporate, institutional, and other organized groups may make advance reservations for the entire facility between the hours of 8:00 a.m. to 10:00 a.m. on Saturdays, 8:00 a.m. to Noon on Sunday, 9:00 a.m. to 11:00 a.m. on Monday through Friday, and between the hours of 1:00 a.m. to 6:00 a.m. Saturday and Sunday mornings. During these additional periods, after the group has arrived the facility shall remain locked and be closed to the general public. Groups of individuals under the age of 18 years of age must be chaperoned.
6. There shall be a maximum of ten (10) employees at any one time associated with this use.
7. The number of parking spaces shall be provided as shown on the special permit plat in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be Determined by the Director, Department of Environmental Management.
8. Prior to the issuance of the Non-Residential Use Permit for this use, accessible parking spaces shall be designated in the parking lot near the building entrance.
9. Pursuant to the approval of SE 91-M-058, the transitional screening and barrier requirements and the interior and peripheral parking lot landscaping requirements were waived; consequently, no additional screening or barrier are required.
10. Signs shall be permitted in accordance with Article 12, Signs.
11. The applicant shall submit to the Zoning Administrator, pursuant to Condition No. 5 above, a log or such other accounting that might be appropriate to show the hours that the use was open during the extended hours from 1:00 a.m. to 6:00 a.m., and the names of the groups which used the facility. Such accounting shall be submitted one (1) and two (2) years following the issuance of the Non-RUP for this use. The Zoning Administrator shall coordinate with the Police Department to determine the number and type of complaints, if any, to that department.

Page 497, March 12, 1996, (Tape 1), BAILEY'S CROSSROADS ASSOCIATES, L.P., SP 95-M-076, continued from Page 496

The hours of operation shall be reviewed by the Zoning Administrator for the two (2) years with particular attention to the hours between 1:00 a.m. and 6:00 a.m. A report shall be submitted to the Board of Zoning Appeals containing the review of the Zoning Administrator.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 20, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 497, March 12, 1996, (Tape 1), Scheduled case of:

CARLOS E. KRUYTBOSCH, VC 96-D-004

(The Board of Zoning Appeals had passed over this case earlier in the public hearing to allow staff an opportunity to contact the applicant as to why they were not present.)

Jane C. Kelsey, informed the Board that staff had been unable to contact the applicant. Mr. Dively made a motion to defer the application to March 19, 1996. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 497, March 12, 1996, (Tape 1), Action Item:

Approval of March 5, 1996 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:25 a.m.

Minutes by: Betsy S. Hurtt

Approved on: April 30, 1996
Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 19, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 499, March 19, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CARLOS E. KRUYTBOSCH, VC 96-D-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 1608 Wrightson Dr. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 105.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carlos E. Kruytbosch, 1608 Wrightson Drive, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant would like to enclose an existing carport which is located 8.6 feet from the side lot line; therefore, a variance of 3.4 feet was requested to the minimum side yard requirement. Ms. Kelsey said page 2 of the staff report outlined the Board of Zoning Appeals' actions that have occurred in the neighborhood.

Mr. Kruytbosch referenced the statement of justification submitted with the application and thanked staff for their assistance through the process. He said it has been his intent to expand the living space for a number of years, but due to financial constraints was unable to do so. Mr. Kruytbosch said he had explored various options of building to the front or rear of the lot, but none were satisfactory for the design of the split-level dwelling. He said approximately 25 houses with similar designs in the neighborhood have either enclosed carports or made the carports an integral part of the house. Mr. Kruytbosch said the neighbor who will be the most impacted does not object to the request and had written a letter in support.

Mr. Hammack asked where the applicant planned to park his car once the carport is enclosed. Mr. Kruytbosch said there will be sufficient room in front of the renovated carport to park the car with access through the expanded kitchen.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 96-D-004 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-004 by CARLOS E. KRUYTBOSCH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.6 feet from side lot line, on property located at 1608 Wrightson Drive, Tax Map Reference 3-4((17))105, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance.
5. There is an unusual situation in the use of the existing property.
6. The applicant would only be enclosing part of an existing carport which would not extend out beyond the existing structure.
7. There is really no other convenient area where the extension to the kitchen could be added in the manner proposed by the applicant.
8. The request will not change the character of the zoning district.
9. The variance will be minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

Page 501 (500), March 19, 1996, (Tape 1), CARLOS E. KRUYTBOSCH, VC 96-D-004, continued from Page

1. This variance is approved for the location of the specific addition (enclosure of existing carport) shown on the plat prepared by Terry Land Measurement, Inc., dated November 8, 1995, and revised January 5, 1996, submitted with this application and is not transferable to other land.
2. Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 20, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 501, March 19, 1996, (Tape 1), Scheduled case of:

8:00 P.M. MT. PLEASANT BAPTIST CHURCH, SP 95-H-062 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 2516 Squirrel Hill Rd. on approx. 3.65 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 28. (MOVED FROM 11/28/95 AND 2/20/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Hricko, Agent, 7150-A Main Street, Clifton, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the applicant was requesting approval in order to construct a 19,300 square foot church containing 490 seats and 126 parking spaces. He said on March 12, 1996, a staff report recommending denial of the applicant's request was published and indicated that the applicant did not meet Standards 1 and 3 because the Comprehensive Plan recommends parcel consolidation in order to achieve a more consolidated redevelopment of the area which is planned for mixed use. Mr. Hunter said without consolidation staff was of the opinion that there will be an adverse impact on the redevelopment of adjacent parcels. Therefore, without the consolidation of Lot 27, staff could not support the application as submitted. He said on Monday, March 18, 1996, the applicant submitted a letter dated March 16, 1996, from the owners of Lot 27 indicating that the owners intended to donate the parcel to the church provided the property will be used as a residence for one of the owners. Mr. Hunter said it was staff's opinion that Lot 27 should be incorporated with the application property and although the church may own Lot 27 it was not part of the application at this time; therefore, staff continued to recommend denial of SP 95-H-062 as submitted. He introduced Chuck Almquist, with the Office of Transportation, who was present to answer any questions the BZA might have regarding road improvements or trip generation.

A discussion took place between the BZA and staff with respect to when the rezoning of Lot 22B occurred and when Lot 27 would be conveyed. Mr. Hunter said that the rezoning occurred in 1994. He explained that the developer consolidated approximately 38 acres and there was a point when staff did not push for further consolidation; unfortunately, Lot 27 was overlooked in that development. In response from Mr. Hammack as to when Lot 27 would be conveyed, Mr. Hunter said there were no details in the letter of intent.

Page 502 March 19, 1996, (Tape 1), MT. PLEASANT BAPTIST CHURCH, SP 95-H-062, continued from Page 501)

The landscape architect, Mark Cross, with Mr. Hricko's office, said he was primarily responsible for the plat. He said the owners of Lot 27 provided for the donation of the lot with the caveat that one of the current owners be allowed to construct a single family residence on the property when resources become available. Mr. Cross said it was the church's position that they had met the spirit and intent of the request to bring Lot 27 under the ownership of the church and resolve the issue of access to Lot 27. He said it is unclear at this point when the lot will be developed.

Mr. Hammack questioned if the owners were aware that without frontage a building permit might be denied. Mr. Cross said staff was recommending that access be provided via an easement through the church parking lot until such time as further improvements are made or until such time as consolidation is explored with sites to the south of the parcel. In response to a question from Mr. McPherson, Mr. Cross said there is presently an abandoned house on the lot. He added that access is currently provided through an outlot road on a parcel to the south of Lot 28.

Mr. Hammack asked why access was not required through Lot 22B even though it was not consolidated and made part of the development. Mr. Almquist said this was actually a third zoning on the property and with the previous zoning such a large consolidation had occurred that staff was not that concerned with acquiring an access at that time since it was unclear how the lots would be developed.

Mr. Hricko said they tried to design the building so that it would fit in with the surrounding residential development. He used the view graph to show the design of the church.

Rev. Graham said the church has been a part of the Floris Herndon community for approximately 130 years and outlined the various ways the church has assisted individuals and organizations in the community. He said due to the vast growth of the community the church has exceeded its present facility and now wished to build a larger church in order to effectively meet the needs of the community.

Mr. Hammack asked if the individuals listed in the letter of intent were members of the church. Rev. Graham said two were members of the church and one resides in Maryland.

There were no further speakers and no further discussion and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant SP 95-H-062 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff with one deletion which required that an access easement be provided from the proposed parking lot to adjacent Lot 27.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-H-062 by MT. PLEASANT BAPTIST CHURCH, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 2516 Squirrel Hill Road, Tax Map Reference 15-4((1))28, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.65 acres.
4. The application was well presented.
5. The area is under going a large transition.
6. This particular parcel is going to be well-suited to serve the needs of the congregation.
7. It fits well within the Comprehensive Plan.
8. The particular problems are overcome by the fact that no one has any objections, particularly the owners of Lot 27.
9. There is access to the abutting lot, Lot 27, indicated on the tax maps to Squirrel Hill Road.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, located at 2516 Squirrel Hill Road, containing 3.65 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by James Hricko, Architect dated February 23, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum seating capacity in the main area of worship shall be 490.
6. There shall be a maximum of one hundred and twenty six (126) parking spaces provided as shown on the special permit plat. All parking for this use shall be on site.
7. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch, Department of Environmental Management, (DEM).
8. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of existing mature trees along all property lines. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utility lines, trails, etc. that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified

on site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public Facilities Manual (PFM).

9. Transitional Screening 1 shall be modified along all property lines as shown on the special plat in order to allow the existing vegetation to remain and satisfy this requirement provided additional plantings are provided to the equivalent of Transitional Screening 1 along the northern lot line. Along the front lot line, the existing gravel parking lot shall be removed and that area revegetated and plantings installed to prevent parking along this road. These plantings and the existing vegetation shall satisfy Transitional Screening 1. The purpose of this screening shall be to soften the visual impact of the proposed church sanctuary from the adjacent residences. Exact type, location, size and number of any additional plantings shall be reviewed and approved by the County Urban Forestry Branch.

The barrier requirement shall be waived along all lot lines.

10. Landscaping and building foundation plantings shall be provided around the proposed structure in order to enhance the visual appearance of the building. An evergreen hedge shall be provided along the border of the parking lot along the southern property line in order to prevent the glare of automobile headlights from impacting adjacent residences. The landscaping, foundation plantings and evergreen hedge shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval at the time of site plan review.
11. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-201 and 13-202 of the Zoning Ordinance.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
- The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. Stormwater Best Management Practices (BMPs) shall be provided as determined by the Department of Environmental Management (DEM) at the time of site plan review.
14. Right-of-way to 25 feet of the centerline of Squirrel Road from the site entrance to the northern property line shall be dedicated to the Board of Supervisors in fee simple at the time of site plan approval or upon demand, whichever occurs first. A fifteen (15) foot cross section from the centerline to the face of curb from the site entrance north to McNair Farms Drive shall be dedicated for public street purposes as approved by the Director, DEM.

Construction of a twelve (12) foot cross section from the centerline to a ditch section on the east side of Squirrel Hill Road shall be provided from the site's entrance north to future McNair Farms Drive Extended, as determined by the Virginia Department of Transportation (VDOT).

South of the entrance, dedication to 25 feet from centerline of Squirrel Hill Road shall be provided upon request by the County or VDOT for any imminent roadway project to improve the road. If construction is not completed by the applicant along the entire frontage of the site, ancillary easements to 15 feet of the proposed property line shall be provided at the time of dedication of the right-of-way.

15. A five foot wide concrete sidewalk shall be provided along Squirrel Hill Road north to future McNair Farms Drive Extended.

Page 505, March 19, 1996, (Tape 1), MT. PLEASANT BAPTIST CHURCH, SP 95-H-062, continued from Page 504

16. The site entrance shall be located generally as shown of the special permit plat. The entrance shall be located in order to minimize the removal of and disturbance to the existing stone wall on site. The stone wall shall be preserved to the maximum extent feasible.
17. Signs shall be permitted provided they are erected in accordance with Article 12 of the Zoning Ordinance.
18. Any trash dumpster located on the property shall be screened by a board-on-board fence, or with plantings which shall completely screen the view of the dumpsters, subject to the approval of DEM.
19. The historic single family dwelling on the property shall remain and be used for offices or classrooms. If the dwelling is used for residential use, it shall only be used as the residence of the pastor or a member of the church staff who functions as caretaker for the property.
20. The structures located along the northern property line shall be removed as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval*unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 27, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 505, March 19, 1996, (Tape 1), Scheduled case of:

9:30 A.M. DANIEL T. HORSEMAN, APPEAL 95-S-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining outdoor storage in excess of 100 sq. ft. in area, that such storage is deemed to be a storage yard and a junk yard, is parking two dump trucks and other construction equipment on the subject property in violation and of Zoning Ordinance provisions. Located at 12612 Harper Dr. on approx. 23,069 sq. ft. of land zoned R-C. Springfield District. Tax Map 66-4 ((4)) 40. (DEF. FROM 12/5/95 AND 1/30/96 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, said the notices were not in order; however, the appellant had submitted a memorandum indicating that a portion of the violation will be resolved. Mr. Shoup said documents were also submitted wherein the appellant was trying to establish some nonconforming rights for the parking of a dump truck, trailer, and a backhoe on the property. He said staff's position was the appeal could not go forward and while they did have some concern regarding the length of time the matter has gone unresolved, staff would support a deferral based on the new information. Mr. Shoup suggested a deferral date of May 14, 1996 and staff would review the documents and provide an update if necessary.

The appellant's attorney, James Pinkowski, agreed to the deferral date.

Page 506 March 19, 1996, (Tape 1), DANIEL T. HORSEMAN, APPEAL 95-S-055, continued from Page 505

Mr. Kelley said he would make a motion at the next meeting if the notices were not in order that the appeal be dismissed.

Mr. Hammack said if staff and the appellant were unable to resolve the issues the appellant should be ready to go forward on May 14th and made a motion to grant the deferral. Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mr. McPherson voting nay. Mr. Ribble was absent from the meeting.

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Page 506, March 19, 1996, (Tape 1), Action Item:

Approval of March 12, 1996 Resolutions

Mr. Kelley corrected page 2, Conditions 5 and 11, of the Resolution for Bailey's Crossroads as edited by staff and the applicant and moved to approve the Resolutions as modified. Ms. Kelsey requested a clarification and Mr. Kelley stated that the condition would read exactly as it is written in the Resolution. Ms. Kelsey asked Mr. McBride if that was satisfactory and he nodded affirmatively. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 506, March 19, 1996, (Tape 1), Action Item:

Approval of January 23, 1996 Minutes

Mr. Hammack made a motion to approve the Minutes as submitted by staff. Hearing no objection, the Chair so ordered.

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Page 506, March 19, 1996, (Tape 1), Action Item:

Stanis Furniture Appeal Acceptance

Mr. Pammel made a motion to accept the appeal and schedule it for the date of May 28, 1996, as suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 8:45 p.m.

Minutes by: Betsy S. Hurtt

Approved on: April 30, 1996

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 26, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:07 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 507, March 26, 1996, (Tape 1), Scheduled case of :

9:00 A.M. PHYLLIS L. LOFTON & JOHN H. KREUTZER, VC 96-V-006 Appl. under Sect(s).18-401 of the Zoning Ordinance to permit construction of additions 5.1 ft. and 6.9 ft. from side lot lines. Located at 6111 Woodmont Rd. on approx. 8,125 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (6) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Phyllis Lofton, 6111 Woodmont Road, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Lori Greenlief dated March 19, 1996. The applicant requested a variance of 3.1 feet to the western side lot line and 4.9 feet to the eastern side lot line. Mr. Hunter noted that the existing dwelling was constructed in the 1930's prior to the adoption of the Zoning Ordinance. One letter in opposition was submitted.

Ms. Lofton presented the variance request as outlined in the statement of justification submitted with the application. She submitted letters of support and a petition signed by neighbors in support of the application. Ms. Lofton introduced photographs of the subject property to the Board which displayed a large tree between the subject property and the adjacent property.

Nancy Gray, resident on Lot 13, and Luella Connolly, 39 year resident of the neighborhood, spoke in opposition. They expressed concerns pertaining to environmental impacts, blocked lighting, and privacy.

Ms. Lofton addressed the speakers' concerns in her rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 96-V-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 19, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-006 by PHYLLIS L. LOFTON & JOHN KREUTZER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 5.1 feet and 6.9 feet from side lot lines, on property located at 6111 Woodmont Road, Tax Map Reference 83-3((14))(6)14, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,125 square feet.
4. The applicants met the required standards for a variance.
5. The lot is narrow.
6. The house was built in the 1930's.
7. The proposed addition would be the same distance from the lot line as the existing dwelling.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching by confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions (wood frame addition, enclosure of existing breezeway and roofed deck) shown on the plat prepared by John Rust, dated January 5, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently

Page 509, March 26, 1996, (Tape 1), PHYLLIS L. LOFTON & JOHN H. KREUTZER, VC 96-V-006, continued from Page 508

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-1-1. Mr. Pammel voted nay and Mr. Dively abstained from the vote. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 509, March 26, 1996, (Tape 1), Scheduled case of :

9:00 A.M. FIRST UNION NATIONAL BANK OF VIRGINIA, VC 96-P-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit peripheral parking lot landscaping to remain 7.9 ft. from the street line of a corner lot. Located at 1751 Pinnacle Dr. on approx. 6.68 ac. of land zoned C-4, HC and SC. Providence District. Tax Map 29-4 ((1)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Smith with the law firm of Hazel & Thomas, 9324 West Street, Manassas, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated March 19, 1996. The applicant requested a variance of 2.1 feet to the minimum front yard requirement.

The applicant's agent, Mr. Smith, presented the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-P-005 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 19, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-005 by FIRST UNION NATIONAL BANK OF VIRGINIA, under Section 18-401 of the Zoning Ordinance to permit peripheral parking lot landscaping to remain 7.9 feet from the street line of a corner lot, on property located at 1751 Pinnacle Drive, Tax Map Reference 29-4((1))2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the property.
2. The present zoning is C-4, HC and SC.
3. The area of the lot is 6.68 acres.

4. The applicant met the required standards for a variance.
5. Removing the existing parking structure causing the landscaping strip to be only 7.9 feet in width would cause extreme hardship.
6. The parking structure was located in error.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching by confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the parking structure shown on the plat prepared by Dewberry & Davis, dated August 10, 1995, and revised through December 29, 1995 submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Page 511, March 26, 1996, (Tape 1), FIRST UNION NATIONAL BANK OF VIRGINIA, VC 96-P-005, continued from Page 510

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 510, March 26, 1996, (Tape 1), Scheduled case of :

9:00 A.M. WILLIAM L. OEN, SP 95-P-074 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.0 ft. from side lot line. Located at 7226 Allan Ave. on approx. 11,333 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((3)) 45. (MOVED FROM 2/27/96 AT APPL.'S. REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William L. Oen, 7226 Allan Avenue, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Susan Langdon dated March 19, 1996. The applicant requested a modification of 10.0 feet to the side lot line.

Mr. Oen presented the special permit request as outlined in the statement of justification submitted with the application. He said the structure was well camouflaged and was several feet from any other structure. Mr. Oen said the neighbors were in support of the application.

Chairman DiGiulian called for speakers.

Carl Musick, 7224 Allan Avenue, spoke in opposition. He expressed a concern pertaining to the resell value of his property.

Mr. Oen addressed the speaker's concern in his rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 95-P-074 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 19, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 95-P-074 by WILLIAM L. OEN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.0 feet from side lot line, on property located at 7226 Allan Avenue, Tax Map Reference 50-1((3))45, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

- 1. This special permit is approved for the location and the specified accessory storage structure shown on the plat submitted with this application and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Peter R. Moran, Land Surveyor, dated October 20, 1995, submitted with this application.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1996. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JOSEPH E. ROBERT, JR., VC 95-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear lot line. Located at 1175 Dolley Madison Blvd. on approx. 2.02 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 1K.

Page 513, March 26, 1996, (Tape 1), JOSEPH E. ROBERT, JR., VC 95-D-125, continued from Page 512

Mr. McPherson made a motion to accept the withdrawal of VC 95-D-125. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 513, March 26, 1996, (Tape 1), Scheduled case of :

9:00 A.M. DORRIS C. SYMAN, VC 95-H-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 3B having lot width of 139.15 ft. Located at 9800 Clarks Crossing Rd. on approx. 3.00 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 3. (AMENDED AND MOVED FROM 3/12/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John P. Sekas, 9434 Lakeside Drive, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated March 19, 1996. The applicant requested a subdivision variance of one lot into two lots.

The applicant's agent, Mr. Sekas, presented the applicant's request as outlined in the statement of justification submitted with the application. He noted that the neighbors were in support of the application.

Dorris Syman, applicant, and Lisa Snyder, future owner of proposed Lot 3B, spoke in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-H-143 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 19, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-143 by DORRIS C. SYMAN, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 3B having lot width of 139.15 feet, on property located at 9800 Clarks Crossing Road, Tax Map Reference 28-3((1))3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.00 acres.
4. The applicant met the required standards for a variance.
5. The lot is narrow.
6. The variance request was reasonable.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lot 3 as shown on the plat prepared by Land Design Consultants, dated December 15, 1995. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
3. The requirement for frontage improvements along Clarks Crossing Road shall be as determined by the Department of Environmental Management.
4. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance.

Pursuant to Sect 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 515, March 26, 1996, (Tape 1), DORRIS C. SYMAN, VC 95-H-143, continued from Page 514

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 515, March 26, 1996, (Tape 1), Scheduled case of :

9:30 A.M. MARITA WILLOUGHBY, APPEAL 95-S-066 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that two barns/stables have been constructed on appellant's property closer to side lot line than permitted under Zoning Ordinance provisions. Located at 13310 Compton Rd. on approx. 5.70 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24. (DEF. FROM 1/30/96 FOR NOTICES.)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated March 18, 1996. He noted that the appellant had applied for a special permit. The appellant's agent, Paul Bore, presented the arguments forming the basis for the appeal. He submitted photographs of the subject property. Mr. Bore submitted 6 letters of support from the neighbors.

Joan Ozdogan, 13230 Compton Road, and Alan Harvey, 1018 Desalle Street, came forward to support the Zoning Administrator's position. They expressed concerns about having a commercial operation on the property and the number of cars being parked on the property during those times. Mr. Harvey said the appellant's fence is located on his property.

Mr. Bore addressed the speakers' concerns in his rebuttal.

Mr. Dively moved to uphold the Zoning Administrator's decision based on the arguments and the evidence presented. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 513, March 26, 1996, (Tape 1), Scheduled case of :

9:30 A.M. SYED ASLAM ALI, Appeal 96-L-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has established a quick service food store and expanded the existing service station use without special exception approval and is maintaining outdoor storage in conjunction with the service station use in violation of Zoning Ordinance provisions. Located at 6117 Franconia Rd. on approx. 20,823 sq. ft. of land zoned C-5. Lee District. Tax Map 81-3 ((5)) 1A.

Syed Aslam Ali came forward and explained to the Board that he had filed a special exception application and requested a deferral until the special exception application was complete.

William Shoup, Deputy Zoning Administrator, said staff had recently received the deferral request and that the special exception had not been filed the previous day. He noted that a preliminary review indicated that there were a number of deficiencies with the special exception application. He expressed concern with deferring the appeal application too far out. Mr. Shoup said not all of the violations could be rectified through the special exception process; however, the appellant had been advised that a special exception would correct some of the violations when they received notice on December 7, 1995, but the appellant did not file the special exception application until March 25, 1996. Mr. Shoup recommended that the Board defer the appeal application to April 23, 1996 which would be sufficient time to get the submission requirements fulfilled. He said a determination of further deferral could be considered at that time.

There were speakers arguing against the deferral.

Page 516, March 26, 1996, (Tape 1), SYED ASLAM ALI, Appeal 96-L-001, continued from Page 505)

Mr. Kelley moved to defer A 96-L-001 to the morning of April 23, 1996. Mr. Dively seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Hammack was absent from the meeting.

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Page 516, March 26, 1996, (Tape 1), Action Item:

Approval of March 19, 1996 Resolutions

Mr. McPherson moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 516, March 26, 1996, (Tape 1), Action Item:

Approval of November 28, 1995, January 2, 1996,
January 30, 1996 and February 20, 1996 Minutes

Mr. McPherson moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 516, March 26, 1996, (Tape 1), Action Item:

Request for Change of Permittee
Cascades Associates L.P., SP 95-D-001

Mr. Pammel moved to approve the Change of Permittee from Bondy Way Development Corporation to Cascades Associates L.P. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 516, March 26, 1996, (Tape 1), Action Item:

Request for Change of Permittee
Korean Central Baptist Church, SP 82-D-066

Mr. Pammel moved to approve the Change of Permittee from Christian Fellowship Church to Korean Central Baptist Church. Mr. McPherson seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 516, March 26, 1996, (Tape 1), Action Item:

Request for Additional Time
Stump Dump, Inc., SP 94-D-058

Mr. Kelley moved to approve the Request for Additional Time for SP 94-D-058. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting. The new expiration date is March 8, 1997.


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Page 511, March 26, 1996, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: Regina Thorn

Approved on: April 30, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 2, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 519, April 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. KEITH W. & PHYLLIS P. SHERPER, VC 95-M-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 3252 Juniper Ln. on approx. 30,519 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((3)) 39A. (DEF. FROM 12/5/95 AT APPLICANTS' REQUEST). (MOVED FROM 1/9/96 DUE TO BZA HEARING BEING CANCELLED. MOVED FROM 2/27/96 AT APPLICANTS' REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Rosati, with the law firm of Lawson and Frank, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated November 28, 1995 prepared by Lori Greenlief. The applicant requested a variance of 5.0 feet to the minimum side yard requirement. Mrs. Anderson advised the Board that this case had been previously deferred from December 1995, to allow the applicants time to reexamine their proposed request and to respond to concerns over the difficulty in maintaining a structure located 2.0 feet from the lot line.

The applicants' agent, Michelle Rosati, presented the applicants' request as outlined in the statement of justification submitted with the application. Ms. Rosati addressed the Board's concerns regarding the original variance request by stating that the applicants' would like to amend their request so as to build the carport 3.0 feet from the side lot line, resulting in a variance of 4.0 feet to the minimum side yard requirement. She also submitted a letter of support from a neighbor.

The following spoke in support; Keith Vinsky, 3256 Juniper Lane, stated that he was the adjacent neighbor and would be the neighbor most impacted by the carport. He said the houses are not parallel to one another; therefore, the carport would not be directly next to any structure on his property. He stated that he would allow access from his property for construction and continued maintenance of the carport.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant in part VC 95-M-106 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 28, 1995.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-M-106 by KEITH W. & PHYLLIS P. SHERPER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 2.0 feet (**THE BOARD GRANTED 3.0 FEET**) from side lot line, on property located at 3252 Juniper Lane, Tax Map Reference 61-1((3))39A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals;

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 30,519 square feet.
4. The decision was difficult.
5. The applicant stated that there were some constraints that would prevent the location of the carport in other areas of the property without difficulty.
6. The application was amended to place the addition 3.0 feet from the property line instead of the originally proposed 2.0 feet, resulting in a 4.0 foot variance instead of a 5.0 foot variance.
7. All things considered, the applicant presented enough justification to show a hardship; the lots were resubdivided, which placed the dwelling much closer to the side lot line than when the dwelling originally was constructed.
8. The proposal for a carport was more acceptable than a garage in the same location because of its openness and the fact that a carport would be less intrusive upon adjacent property for maintenance purposes.
9. The applicant made a good case for his proposal.
10. An important factor is that the dwelling on the adjacent property is further forward than the subject dwelling, ameliorating any impact; if the proposed addition were to be located in the front yard, it would impact the dwelling on the adjacent property.
11. It was noted that the applicants' attorney pointed out the constraints in the back yard.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART** with the following limitations:

- 1. This variance is approved for the location of the specific carport shown on the plat prepared by James H. Guynn, dated April 27, 1995, revised through April 9, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 17, 1996, the date the Board approved the revised plat and Resolution. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DONALD & JOAN DOLNACK, VC 96-H-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from pipestem and side lot line such that side yards total 21.5 ft. Located at 12723 Pinecrest Rd. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-2 ((6)) 737.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Donald Dolnack, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated March 26, 1996, prepared by Lori Greenlief. The applicant requested a variance of 14.0 feet to the side yard contiguous to a pipestem and 3.5 feet to the minimum side yard requirement.

Mr. Dolnack presented his request as outlined in the statement of justification submitted with the application.

Mr. Pammel questioned the applicant as to what hardship existed that would justify the variance. Mr. Dolnack stated that they needed a storage area for household items in addition to their vehicles, and there was no other place on the lot for a garage.

Mr. Pammel asked the applicant if he would agree to a 22 foot wide garage instead of the proposed 24 foot width. The applicant responded negatively.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant in part VC 96-H-003 allowing the garage to be 22.0 foot in width instead of the originally requested 24.0 foot width.

Mr. Kelley seconded and moved to amend Mr. Pammel's motion to grant in part, making a new motion to grant the original request as submitted. Mr. Dively seconded the motion to amend which carried by a vote of 6-1 with Mr. Pammel voting nay.

Mr. Kelley then moved to grant VC 96-H-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996. Mr. Dively seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-003 by DONALD & JOAN DOLNACK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.0 feet from pipestem and side lot line such that side yards total 21.5 feet, on property located at 12723 Pinecrest Road, Tax Map Reference 25-2((6))737, Mr. Kelley moved that the Board of Zoning Appeals grant.

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 10,500 square feet.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (garage) shown on the plat prepared by Mark Allan Courard, dated January 4, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 523, April 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES W. SWING, VC 96-S-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.6 ft. from side lot line and 18.3 ft., 22.6 ft., and 16.1 ft. from front lot line. Located at 5807 Hill St. on approx. 20,899 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((1)) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, James Swing, 7031 Cold Point Road, Clifton, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated March 26, 1996, prepared by Lori Greenlief. The applicant requested a variance of 12.4 feet to the minimum side yard and 21.7 feet, 17.4 feet and 23.9 feet to the minimum front yard requirements.

Mr. Swing presented his request as outlined in the statement of justification submitted with the application.

Mr. Ribble questioned the applicant on the status of Hill Street. Mr. Swing advised that Hill Street is now filled with trees and has not been used for several years; Tinkers Lane is the access road for the property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 96-S-008 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-008 by JAMES W. SWING, under Section 18-401 of the Zoning Ordinance to permit construction of additions 7.6 feet from side lot line and 18.3 feet, 22.6 feet and 16.1 feet from front lot line, on property located at 5807 Hill Street, Tax Map Reference 77-1((1))11, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 20,899 square feet.
4. The lot is pie-shaped and is located between Fairfax Station Road and the railroad tracks.
5. The moving board member lives and shops in the area and is familiar with the property.
6. The classic double front is a consideration in this situation because of a street which is not used at all and can hardly be seen, but which restricts the applicant in making modifications.
7. Although the property is a good-sized lot, the dwelling is located to the rear of the lot and is almost upon the unused street, making it reasonable to have the variance approved by the Board.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district

and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions (garage, living space and enclosure of existing porch) shown on the plat prepared by Rice Associates, P.C., dated December 18, 1995, and signed December 20, 1995 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 525, April 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT T. BLAU AND JANE E. MAGO, VC 96-D-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line. Located at 5848 Upton St. on approx. 15,898 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((19)) 57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Jane Mago, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated March 26, 1996 prepared by Lori Greenlief. The applicant requested a variance of 7.7 feet to the minimum side yard requirement.

Page 526, April 2, 1996, (Tape 1), ROBERT T. BLAU AND JANE E. MAGO, VC 96-D-009, continued from Page 525)

Jane Mago presented her request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 96-D-009 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-009 by ROBERT T. BLAU AND JANE E. MAGO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.3 feet from side lot line, on property located at 5848 Upton Street, Tax Map Reference 31-4((19))57, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,898 square feet.
4. The lot has exceptional narrowness and shape, whereby the side lot lines converge toward the rear of the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching

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confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (enclosure of existing carport for garage and second story addition on existing and proposed garage) shown on the plat prepared by Alexandria Surveys, Inc., dated December 22, 1995 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 527, April 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. HAI VAN HO, VC 95-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.5 ft. from side lot line and 37.8 ft. from street line of a corner lot. Located at 2231 Williams Ave. on approx. 7,448 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (C1A) B, 1, 2, 3. (MOVED FROM 3/5/96 PER APP.'S REQ.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Ba Pham, 2907 Willston Place, Falls Church, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated March 26, 1996. The applicant requested a variance of 6.5 feet to the minimum side yard requirement and 2.2 feet to the minimum front yard requirement.

Mr. Pham presented the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-P-136 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-P-136 by HAI VAN HO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.5 feet from side lot line and 37.8 feet from street line of a corner lot, on property located at 2231 Williams Avenue, Tax Map Reference 39-3((11))(C1A)B,1,2,3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 7,448 square feet.
4. The lot is exceptionally narrow.
5. The addition is large for this size lot; however, the applicant justified the request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and

will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition (garage with second story rooms) shown on the plat prepared by Peter R. Moran, Land Surveyor, dated July 12, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was not present for the vote. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 529, April 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. KWANG KIM, SP 96-M-002 Appl. under Par. 3E Sect(s). 4-603 of the Zoning Ordinance to permit similar commercial recreation use (Karaoke). Located at 7108 and 7110 Columbia Pl. on approx. 1.06 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((4)) 147.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Brian Im, 7630 Little River Turnpike, Annandale Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and stated that the applicant has requested to be permitted to operate a commercial indoor recreational use consisting of Karaoke music rooms. The applicant has requested that their hours of operation be from 4:00 p.m. to 4:00 a.m. every day. However, while staff has recommended approval of the application, they have recommended the hours of operation be from 4:00 p.m. to 2:00 a.m.

Brian Im presented the applicant's request as outlined in the statement of justification submitted with the application. Mr. Im said that the applicant agrees with the staff report and the findings; however, they request that the Board consider the hours of operation to be permitted from 4:00 p.m. to 4:00 a.m. because the business will be targeting customers who work late hours.

Mr. Pammel questioned Mr. Im as to how many employees will be on duty until 4:00 a.m. He replied that there will be two employees on duty.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant SP 96-M-002 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-M-002 by KWANG KIM, under Section 4-603 of the Zoning Ordinance to permit similar commercial recreation use (Karaoke), on property located at 7108 and 7110 Columbia Pike, Tax Map Reference 71-1((4))147, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is C-6, HC and SC.
3. The area of the lot is 1.06 acres.
4. There was not sufficient justification to deviate from the Board's established policy of imposing a closing time of 2:00 a.m. on an establishment of this nature; there are good reasons for this requirement and the Board did not believe there was sufficient reason to change the policy.
5. The maker of the motion recalled one case where the Board deviated from the policy but only in the sense that chaperones were required, advance planning was required, and the establishment was not open to the public under those conditions. A trial period was also imposed.
6. Emphasis was put on the Board's belief that commercial establishments should not remain open after 2:00 a.m.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7108 and 7110 Columbia Pike (2,025 square feet) and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this indoor commercial recreation use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit plat prepared by Robert Sproles for Huntley, Nyce & Associates, Ltd., dated November 15, 1995, revised through December 12, 1995 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a

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conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The hours of operation shall be limited to 4 p.m. until 2 a.m., daily.
5. There shall be a maximum of two (2) employees at any one time associated with this use.
6. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be determined by the Director, Department of Environmental Management.
7. Prior to the issuance of the Non-Residential Use Permit for this use, accessible parking spaces shall be designated in the parking lot near the building entrance.
8. Signs shall be permitted in accordance with Article 12, Signs.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. McPherson were not present for the vote. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 531, April 2, 1996, (Tape 1), Scheduled case of:

9:30 A.M. LONDON & NELLIE MORGAN, VC 96-L-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots, proposed Lot 2-A having a lot width of 80.0 ft. Located at 4722 Pole Rd. and 8307 Carlwood Rd. on approx. 1.05 ac. of land zoned R-3. Lee District. Tax Map 101-3 ((1)) 3D and 3F. (Concurrent with SP 96-L-001).

9:30 A.M. LONDON & NELLIE MORGAN, SP 96-L-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.5 ft. from rear lot line and 6.0 ft. from side lot line. Located at 8307 Carlwood Rd. on approx. 21,645 sq. ft. of land zoned R-3. Lee District. Tax Map 101-3 ((1)) 3F. (Concurrent with VC 96-L-001).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' agent, Robert L. Franca, 1402 Olde Towne Road, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated March 26, 1996. The applicant requested a variance to permit subdivision of two lots into three, with proposed corner Lot 2A having a variance of 25.0 feet to the lot width requirement. The special permit request is for error in building location to allow a shed to remain 6.0 feet from the minimum side yard requirement and

5.5 feet from the minimum rear yard.

Robert Franca presented the applicant's request as outlined in the statement of justification submitted with the application. He added that they have spoken to several neighbors in the area and they had no objections.

In response to the Boards' question as to what hardships existed, Mr. Franca advised that Mr. Morgan would like to retire and wanted a place for his children to live.

The following spoke in support. Landon and Nellie Morgan, 8307 Carlwood Road, Alexandria, Virginia. They reiterated their agent's reasons for granting their request.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-L-001 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-001 by LANDON & NELLIE MORGAN, under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots, proposed Lot 2-A having a lot width of 80.0 feet, on property located at 4722 Pole Road and 8307 Carlwood Road, Tax Map Reference 101-3((1))3D and 3F, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.05 acres.
4. There is an unusual configuration but, most importantly, the proposed resulting lots from this division of land are consistent with the existing lot sizes and configurations immediately to the west, on the other side of Carlwood Road; proposed lot sizes are consistent with the R-3 zoning category; and there will not be any change to the character of the area as the development is entirely consistent with the area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the subdivision of Lots 3D and 3F into three (3) lots as shown on the plat prepared by Payne Associates, dated August 22, 1995, and revised through March 7, 1996. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
- 2. The applicant shall dedicate in fee simple to the Board of Supervisors 45 feet of right-of-way from the centerline of Pole Road for public street purposes upon request. Ancillary easements shall be provided upon request if necessary to facilitate any improvements.

Pursuant to Section 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-1. Mr. Hammack voted nay. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel moved to grant SP 96-L-001 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 26, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-L-001 by LONDON & NELLIE MORGAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.5 feet from rear lot line and 6.0 feet from side lot line, on property located at 8307 Carlwood Road, Tax Map Reference 101-((1))3F, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location of the specified accessory storage structure shown on the plat submitted with this application and is not transferable to other land.

Page 535, April 2, 1996, (Tape 1), LANDON & NELLIE MORGAN, VC 96-L-001 and SP 96-L-001, continued from Page 531

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Payne Associates dated August 22, 1995, revised through March 7, 1996, submitted with this application, as qualified by these development conditions.

This approval*, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Dively seconded the motion which carried by a vote of 7-0. The Board waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 535, April 2, 1996, (Tape 1), Scheduled case of:

9:30 A.M. TAC GROUP OF VIRGINIA, INC., T/A FRUGAL FANNIES, APPEAL 93-B-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant's retail sales operation occupies more than 5,000 sq. ft. and more than twenty-five percent of the gross floor area of the establishment in violation of Par. 3 of Sect. 5-405 and Par. 1 of Sect. 2-305 of the Zoning Ordinance. Located at 5265 Port Royal Rd. on approx. 2.11 ac. of land zoned I-4. Braddock District. Tax Map 70-4 ((10)) 2-B1.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated March 25, 1996.

Mr. McPherson questioned Mr. Shoup on how he came by the figures that Frugal Fannies was operating retail sales in 79% of the building. Mr. Shoup replied that the estimate was taken from measurements done on site by the Zoning Inspectors. He said actual measurements were taken from areas that were clearly oriented to retail activity, such as display and customer service areas, as opposed to warehouse activity.

The appellants agent, Bill Baskin, presented the arguments forming the basis for the appeal. Mr. Baskin stated that there were two separate businesses being operated from the site, and each had their own separate Non-Residential Use Permit (Non-RUP). In 1981, Frugal Fannies sought and received a determination from the Zoning Administrator that they could operate with retail sales activity in 25% of the total area. The portion of the site that was to be deemed retail sales was determined to be the areas in the front of the building where the cashier areas were located, and the remaining areas were to be warehouse which meant that less than 25% of the area was occupied by retail activity. In 1985, Non-RUPS were issued for name changes; in March and August of 1992 Non-RUPS were again issued. The appellants believed the reissue of these Non-RUPS reaffirmed the original determination.

Mr. Baskin stated that it was their position that the use had been consistent for the past fifteen years and has not changed nor had their business operation changed. They felt this violation was a result of a change in interpretation by the Zoning Administrator's Office. Mr. Baskin felt the appellant's were entitled to the original determination that was made and should be allowed to continue to operate under that determination which places them within the requirements of the Zoning Ordinance.

Mr. Pammel asked Mr. Baskin if it was their position that they were grand fathered under the interpretation of the initial determination that allowed them to operate and have a retail activity a certain number of hours per week. Mr. Baskin responded affirmatively. He stated that they have not changed their operation since it was started in the 1981, except for the Frugal Fannies area which was expanded in 1992, but still operates under the same constraints.

Mr. Hammack asked Mr. Baskin if was their position that Frugal Fannies had not expanded its retail

operation out into the warehouse area over the years. Mr. Baskin responded negatively and he stated that it was their position that the Zoning Administrator's Office was now taking a different viewpoint as to what constituted retail areas. He said retail was originally determined to be where the cashiers were located and the actual retail sales were made.

The following speakers spoke in support of the appellant's position. Tom Spangler, agent for Port Royal Road General Partnership; Bill Ludwig, CSN Management. They represented the adjacent property owners and stated that the appellants had no adverse impact on the use and operation of their buildings and that they were a positive addition to the industrial park.

Mr. Shoup advised that there was no question on what was previously issued. They issued the Non-RUPs based on 25% of the floor area being used for retail and the remaining area being used for warehouse. He said that when the Non-RUPs were reissued the county relied on the appellant's representation and that he was not aware of any follow-up inspections regarding the Non-RUPs.

Mr. Hammack asked Mr. Shoup was there any Zoning Administrator's determination as to how retail would be interpreted as compared to warehouse and had anything been applied in the past. Mr. Shoup advised that there was not a written interpretation but the way it had been administered in the past was if there were any areas that support the retail operation that area was considered to be retail. He said examples would be: display areas, dressing rooms, customer lounges, and office space.

Mr. Shoup showed a sketch done by the Zoning Inspectors that was not included in staff report. It depicted the retail versus warehouse areas that was observed on the site.

In rebuttal, Mr. Baskin disagreed with the above findings and stated that there was never a determination made by Zoning that the arrangement and use was 75% warehouse and 25% retail. He said when Frugal Fannies originally filed for a Non-RUP, Zoning officials were brought to the site and shown how the operation was going to be handled and exactly where it was going to be done. At that time the determination was made that the retail area would be deemed to be the area where the sales occurred and where the cashiers were located.

Vice Chairman Ribble closed the public hearing. Mr. Hammack made a motion to uphold the Zoning Administrator for the following reasons. He said it was his understanding that the limitation on retail was to be within the area designated for retail. He said Mr. Shoup testified that they issued the Non-RUPs based on the representation of the applicants. He felt that even if Zoning was lenient in the past, they were not precluded from enforcing the zoning on it at this point. Mr. Hammack stated that he was convinced that Frugal Fannies was operating retail sales in areas they shouldn't, even though it may not have been intentional.

Mr. Pammel seconded the motion and Vice Chairman Ribble called for a discussion.

Mr. Pammel noted that regardless of what the interpretation was in 1981, when the Non-RUPs were first issued they were for a smaller building. In 1992, when the appellants came in to apply for two new Non-RUPs for 20,000 square feet each, they had expanded. The interpretation by the County was specifically for 5,000 square feet retail sales and 15,000 square feet for warehouse. He said the plat provided by Staff showed that Frugal Fannies occupied 30,000 square feet of the total area of the two buildings, and that Frugal Footwear occupied 10,000 square feet. Mr. Pammel said that is not in sync with what had been represented by the appellants and not in sync with what was represented on the two Non-RUPs.

Mr. McPherson stated that he was not convinced of the time equation to determine retail space. He voted against the motion because he felt the county had blessed directly and indirectly the practical construction of what the applicant had done.

Mr. Dively stated that this was a matter of interpretation of the Zoning Ordinance and the rules and restrictions on this had been clear from the outset. He voted to uphold the Zoning Administrators decision.

Mr. Kelley stated that he agreed with Mr. McPherson's comments and voted against the motion.

Page 537, April 2, 1996, (Tape 1), TAC GROUP OF VIRGINIA, INC., T/A FRUGAL FANNIES, APPEAL 93-B-031, continued from Page 536

The motion passed by a vote of 4-2-1 with Mr. McPherson and Mr. Kelley voting nay. Chairman DiGiulian abstained from the vote.

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Page 537, April 2, 1996, (Tape 2), Scheduled case of:

9:30 A.M. KATHY AND LARRY PATTERSON, Appeal 95-V-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the appellants are parking a dump truck in a residential district in violation of the Zoning Ordinance provisions. Located at 4021 Colonial Ave. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((2)) 16. (DEF. FROM 11/21/95. DEF. FROM 2/20/96 FOR NOTICES)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated March 22, 1996.

The appellant, Kathy Patterson, presented the arguments forming the basis for the appeal. She said that the vehicle was basically a small pickup truck with a dumpbed that was not functional. It was used for yard work purposes only. She mentioned that a nearby neighbor had also been storing a similar type vehicle in the neighborhood. Mrs. Patterson advised the Board that they were in the process of trying to sell the truck and she had two business cards of interested buyers. Mrs. Patterson submitted support letters from area neighbors.

Chairman DiGiulian discussed with Mr. Shoup why there wasn't another complaint issued for the neighbor owning the same type vehicle.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to uphold the Zoning Administrator for Appeal 95-V-046, on the grounds that they have in fact a dump truck located on their property and requests that the Zoning Administrator defer enforcement of this until after July 1, 1996. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 537, April 2, 1996, (Tape 2), Scheduled case of:

Approval of Resolutions
from the March 26, 1996 hearing

Mr. Ribble moved to approve the above resolutions. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 537, April 2, 1996, (Tape 2), Scheduled case of:

Approval of Minutes
from the February 13, 1996 hearing

Mr. Ribble moved to approve the above minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 538, April 2, 1996, (Tape 2), Schedule case of:

Request for Change of Permittee
for SP 90-C-026 Giant Steps Preschool, Inc.

Mr. Hammack moved to grant the Change of Permittee from The Annunciation Academy to the Giant Steps Preschool, Inc. Mr. Dively seconded the motion which carried by a vote of 7-0.

Mr. Kelley moved to waive the waiting period which is generally imposed before a decision becomes final for all of the previously heard cases. Mr. Dively seconded the motion which passed by a vote of 7-0.

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The Board recessed at 10:10 a.m and reconvened at 10:15 a.m.

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Page 538, April 2, 1996, (Tape 2), Scheduled case of:

Request to defer Appeal Applications
for Truck/Trailer Rental Operations

- Paul G. Douglas, A 95-V-044, October 1, 1996
- Heritage Citgo, A 95-B-045, October 8, 1996
- Harold Dawson/Dawson's Auto Care, A 95-M-048, October 8, 1996
- Darryl A. Gray/PGW, Inc. Sales and Service, A 95-Y-050, October 8, 1996
- Mikes Service Center, A 95-P-054, October 1, 1996

Mr. Pammel moved to defer the five appeals listed in the memo from William Shoup, Deputy Zoning Administrator, and schedule them for the recommended hearing dates. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 538, April 2, 1996, (Tape 2), Scheduled case of:

Request for Board of Zoning Appeals
to meet on a twelve month basis

Mr. Pammel moved to commence to operate on a twelve month basis where they will meet every month and in the month of August, have four regularly scheduled meetings. Mr. Ribble seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Teresa M. Wang

Approved on: May 14, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 16, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:05 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 539, April 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. TYSONS-BRIAR, INC., SPA 82-C-025-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to permit change in development conditions. Located at 9117 Westerholme Way on approx. 6.70 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 45A and 47.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Kane, 1824 St. Roman Drive, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated April 9, 1996. The applicant requested an increase in membership from 600 to 625 in order to accommodate additional senior memberships.

Mr. Kane, presented the special permit request as outlined in the statement of justification submitted with the application.

Mr. Hammack asked Mr. Kane if the request would have an impact on the community. Mr. Kane replied that the members represented in the increase would use the club during non-peak hours which would not affect the community.

Mr. Hammack asked if staff had considered the impact on the community. Staff replied that the Zoning Ordinance was reviewed and the parking was not a concern because it was more than adequate.

Chairman DiGiulian noted one letter submitted in support of the application. There were no speakers and the public hearing was closed.

Mr. Hammack moved to grant SPA 82-C-025-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1996.

There was some discussion about the class of membership and Mr. Kelley said he did not want the Board to get into how the Club allocated its membership and asked Mr. Hammack if he would consider deleting or changing the development conditions relating to that. Mr. Hammack agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-C-025-3 by TYSONS-BRIAR, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to permit change in development conditions, on property located at 9117 Westerholme Way, Tax Map Reference 28-4((1))45A and 47, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals;

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 16, 1996;

and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 6.70 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. *This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9117 Westerholme Way, 6.696 acres, and is not transferable to other land.
- 2. *This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bouma Associates dated December 20, 1991, revised July 6, 1992, and approved with this application, as qualified by these development conditions.
- 3. *A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. *This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. *The hours of operation shall be limited to:
 - Pool, 9:00 a.m. to 9:00 p.m. with six (6) special swim and diving functions per year being allowed to begin at 8:00 a.m. (Management and lifeguards may be in the pool area for maintenance and clean-up outside of the specified hours of operation, but the pool cannot be open for business.)
 - After-hours parties for the swimming pool shall be governed by the following:

Limited to six (6) per season.

Limited to Friday, Saturday and pre-holiday evenings (New Year's, Memorial Day, Labor Day, Independence Day, Thanksgiving, Christmas)

In addition to the pre-holiday evenings listed above, three (3) of the six (6) permitted parties may be week night parties provided written proof is submitted which shows that all contiguous property owners concur.

Parties shall not extend beyond midnight.

The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

Requests shall be approved for one (1) such party at a time and such requests shall be approved only after the successful conclusion (i.e., no complaints) of a previous after-hour party.

- Tennis, 7:00 a.m. to 10:00 p.m. All lights shall be shut off by an automatic timing device at 10:00 p.m.
- 6. *No loudspeakers shall be allowed except for the special swim and diving meets.
- 7. The number of memberships shall not exceed 625.
- 8. *The vegetation near the entrance and at the curve in the parking lot shall be maintained to ensure that the parking spaces in those areas are usable. The dumpster and bike rack shall not be located on any parking lot surface or block any parking spaces.
- 9. *A parking monitor shall be stationed in Westerholme Court before and during swim meets to ensure that no overflow parking occurs on the subdivision streets.
- 10. *One hundred thirty-eight (138) parking spaces shall be provided on site as shown on the special permit plat. All parking shall occur on site.
- 11. *The approved tennis court lights on the two western-most tennis courts shall remain no higher than twenty-two (22) feet and shall be directed downward so as to prevent glare and nuisance light onto the adjacent residential properties.
- 12. *The limits of clearing and grading labeled "existing tree line" on the special permit plat shall be preserved.
- 13. *In the area shown as "proposed picnic area" on the special permit plat, all mature hardwoods and coniferous trees shall be maintained.
- 14. *The existing vegetation and fencing along the northern and western lot lines shall be deemed to satisfy the Transitional Screening 1 and Barrier requirements. Transitional Screening 1 shall be modified to allow a ten (10) foot wide screening yard planted with one row of evergreen trees, nine (9) feet on center, as shown on the special permit plat, along the southern lot line, south of the group of four tennis courts. The existing vegetation along the remainder of the southern lot line shall be deemed to satisfy the Transitional Screening 1 requirement. The existing fencing along the southern lot line shall be deemed to satisfy the barrier requirement. Transitional Screening 1 and barrier shall remain along the existing eastern lot line, adjacent to Lots 15, 16, 17 and 18.
- 15. *The three, twenty-five (25) foot high lights located: 1) at the entrance; 2) near the northwest corner of the bathhouse; and 3) to the west of the two lighted tennis courts shall be shielded and directed downward so as to prevent glare and nuisance light onto the adjacent residential properties.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless a new Non-Residential Use Permit has been obtained to reflect the new development conditions above. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must

Page 542, April 16, 1996, (Tape 1), TYSONS-BRIAR, INC., SPA 82-C-025-3, continued from Page 541)

specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Dively abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 24, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 542, April 16, 1996, (Tape 1), Scheduled case of :

8:00 P.M. ELMWOOD L.L.C., VC 96-L-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings less than 200 ft. from the right-of-way of I-95. Located at 5510 Linnean St. on approx. 13.94 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 9; 82-2 ((3)) (D) B.

Keith Martin, the applicant's agent, came forward and asked the Board for a 30-day deferral of the subject application to allow the applicant to continue to work with staff on the development conditions.

Mr. Pammel moved to defer VC 96-L-002 to the morning of May 14, 1996. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 542, April 16, 1996, (Tape 1), Action Item:

Request for Reconsideration
TAC Group of VA, Inc T/A Frugal Fannies Appeal, A 93-B-031

Chairman DiGiulian said the notation on the After Agenda stated that the decision on A 93-B-031 became final on April 2, 1996 and that was not correct.

Jane Kelsey, Chief, Special Permit and Variance Branch, said she had found that the After Agenda was incorrect after subsequently listening to the tape of the hearing of April 2, 1996, and the decision on this appeal was not final. She stated that the motion to waive the 8-day requirement pertained only to the special permits and variances and not the appeals that were heard on April 2, 1996.

Chairman DiGiulian noted the Request for Reconsideration letter from William Baskin.

William Shoup, Deputy Zoning Administrator, said the issue raised in the Request for Reconsideration was the same issue that was discussed at the public hearing on April 2, 1996. He said Mr. Baskin indicated that at some point in the early 1980's, Zoning had made a determination that only the cash register area of the operation was to be considered retail. Mr. Shoup said there was no record of such determination and the appellant did not have anything in writing to that effect. He said staff would continue to maintain that no such determination was made and would consider much more than just the cash register area to be retail. Therefore, staff recommended that the application not be reconsidered.

Mr. Pammel said he was one of the members that voted on the prevailing side; therefore, he moved that the Board reconsider the action on A 93-B-031. He said after the motion was seconded he would make comments.

Mr. Hammack seconded the motion for purposes of discussion.

Mr. Pammel said after the April 2, 1996, hearing there was information received that concerned him. He said Mr. Shoup stated that staff had researched the records and could find no indication of the opinion alluded to by Mr. Baskin. Mr. Pammel said if Mr. Hansbarger, who represented Frugal Fannies at that time, received an interpretation or a decision by the County Zoning department that the area of the cash

Page 543, April 16, 1996, (Tape 1), TAC Group of VA, Inc T/A Frugal Fannies Appeal, A 93-B-031, continued from Page 542)

register and the immediate surrounding area was the retail area, and they had operated all these years on that premise, that there was some validity to the appellant's position. He said if such a decision was rendered or a determination made, then the 60-day statute would preclude any further appeals and that decision would stand. Mr. Pammel said the Board should request that staff thoroughly evaluate the issues involved in the appeal and find all of the documentation, including individuals involved in the decision, and bring it to the Board sometime in the future. He suggested a one year time frame to give staff ample time to pursue the research of the application. Mr. Pammel said it had been represented to him that the intent of the appellant was to seek a Special Exception through the Board of Supervisors which would legitimize the use on the property in the manner that was discussed at the public hearing held on April 2, 1996. He said if they obtained approval then the issue would become moot in terms of the appeal. Mr. Pammel said he wanted Mr. Hansbarger to express his intent with respect to the Special Exception.

Mr. Hansbarger said their intent would be to defer any action on the motion to reconsider until the Board of Supervisors had met on the Special Exception. He said he was involved when the store originally came to him for assistance. Before they entered into a lease for the place, they wanted to know exactly how much of the building was retail and how much was industrial. Mr. Hansbarger said people from the County Administration, including Zoning, determined that 21,000 square feet, the area that surrounded the cash register, would be the retail area and the rest would be warehouse. He said they entered into a lease on that basis. Mr. Hansbarger said he was not able to name the person from Zoning, but that he remembered the incident and the circumstances surrounding the lease.

Mr. Pammel reiterated the motion to reconsider to allow staff ample opportunity, timewise, to research the matter and also to allow Mr. Hansbarger and Mr. Baskin to proceed with the Special Exception before the Board of Supervisors.

The motion carried by a vote of 6-0-1. Chairman DiGiulian abstained from the vote because of prior work his company had done for Frugal Fannies.

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Page 543, April 16, 1996, (Tape 1), Action Item:

Approval of Resolution and Revised Plat
Keith and Phyllis Sherper, VC 95-M-106

Mr. Pammel moved to approve the resolution and the revised plat. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 543, April 16, 1996, (Tape 1), Action Item:

Request for Additional Time
Church of Jesus Christ of Latter Day Saints
SP 93-H-017

Mr. Kelley moved to grant the request for Additional Time for SP 93-H-017. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 543, April 16, 1996, (Tape 1), Action Item:

Determination for Outside Counsel for Cavallo v. BZA

Mr. Ribble moved to approve the determination for outside counsel to be Brian McCormick. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Page 544, April 16, 1996, (Tape 1), Action Item:

Out of Turn Hearing Request
Habitat for Humanity
VC 96-V-041, VC 96-V-042, and VC 96-V-043

Mr. Pammel moved to grant the Out of Turn Hearing Request for VC 96-V-041, VC 96-V-042, and VC 96-V-043. Mr. Hammack seconded the motion which carried by a vote of 7-0. The public hearing was scheduled for May 21, 1996.

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Page 544, April 16, 1996, (Tape 1), Action Item:

Out of Turn Hearing Request
VC 96-H-046

Mr. Pammel moved to grant the Out of Turn Hearing Request for VC 96-H-046. Mr. Hammack seconded the motion which carried by a vote of 7-0. The public hearing was scheduled for May 21, 1996.

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Page 544, April 16, 1996, (Tape 1), Action Item:

Out of Turn Hearing Request
SP 96-M-010

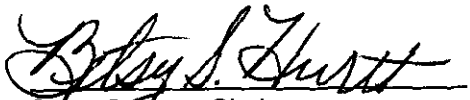
Mr. Kelley moved to grant the Out of Turn Request for SP 96-M-010. Mr. Ribble seconded the motion which carried by a vote of 7-0. The public hearing was scheduled for May 21, 1996.

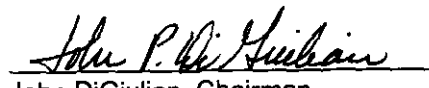
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As there was no other business to come before the Board, the meeting was adjourned at 8:40 p.m.

Minutes by: Regina Thorn

Approved on: May 14, 1996


Betsy S. Murtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 23, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 545, April 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. IRVING L. DENTON, VC 96-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.3 ft. from rear lot line. Located at 7124 Dale Ct. on approx. 10,038 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((17)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William Reames, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated April 16, 1996, prepared by Lori Greenlief. The applicant requested a variance of 9.7 feet to the minimum rear yard requirement. Ms. Kelsey noted that there was a playhouse in violation of the Zoning Ordinance; however, the applicant has agreed to remove or relocate it.

William Reames presented the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-M-011 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 16, 1996.

Mr. Kelley asked Mr. Hammack to consider the deletion of the development condition which pertains to the playhouse, since it was never part of the application. Mr. Hammack concurred and moved to amend his original motion to include deletion of the development condition which states, "The playhouse, as shown on the plat in the western corner of the property, shall be relocated to conform to the minimum side and rear yard requirements for the accessory structure."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-011 by IRVING L. DENTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.3 feet from rear lot line, on property located at 7124 Dale Court, Tax Map Reference 60-3 ((17)) 6, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,038 square feet.
4. The applicant met the nine required standards for variance.
5. The placement of the house is very deep on the lot; therefore there is no other location on the lot to put the addition.
6. The requested variance would not change the Zoning District it is located in.
7. The requested variance would not be detrimental to the community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (sunroom) shown on the plat prepared by John D. Jarrett, dated July 3, 1995, revised through January 31, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 541, April 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES DUNNE, VC 96-B-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line. Located at 5111 King David Blvd. on approx. 12,510 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 224.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Charles Dunne, 5111 King David Boulevard, Annandale, Virginia replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated April 16, 1996, prepared by Lori Greenlief. The applicant requested a variance of 5.0 feet to the minimum rear yard requirement.

Charles Dunne presented his request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-B-012 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 16, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-B-012 by CHARLES DUNNE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.0 feet from rear lot line, on property located at 5111 King David Boulevard, Tax Map Reference 69-4 ((12)) 224, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 12,510 square feet.

4. The applicant met the nine required standards for variance.
5. The shape of the lot is unusual which precludes the addition from being placed in any other location.
6. The variance request is minimal.
7. The requested variance would not impact adjoining properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
 4. That the strict application of this Ordinance would produce undue hardship.
 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
 7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by RC Fields, Jr. & Associates, dated February 2, 1996, revised through February 12, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. STEPHEN L. FORSELL, VC 96-P-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 5.3 ft. and stoop 0.0 ft. from side lot line. Located at 2400 Spring St. on approx. 29,341 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((4)) (B) 1 and 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Michelle Rosati, Law Firm of Lawson and Frank, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated April 16, 1996, prepared by Lori Greenlief. The applicant requested a variance of 6.7 feet to the minimum side yard requirement for the dwelling and a variance of 7.0 feet to the minimum side yard requirement for the stoop. The dwelling was originally constructed on two lots and the applicant had proposed to sever Lot 2 from Lot 1 resulting in the dwelling being too close to the lot line.

Mr. Hammack questioned Ms. Kelsey on how a stoop, a concrete apron, and an unapproved driveway located on Lot 2 would be handled. She said the applicant proposed to execute an easement prior to conveyance of the property and that staff had questioned Ms. Rosati on the situation, who was prepared to address the Board's concerns.

Michelle Rosati presented the applicant's request as outlined in the statement of justification submitted with the application. Ms. Rosati submitted a petition in support of the request. She also advised the Board that at settlement, there would be a 10.0 foot easement granted from Lot 2 to Lot 1, to handle the concrete apron that crosses onto Lot 2.

Mr. Kelley voiced concern over the easement not already being in place. Ms. Rosati advised that the applicant would agree to a development condition addressing the easement or the Board could grant a deferral until the next meeting and she would provide the Board with an executed easement.

Mr. Pammel asked Ms. Rosati if it was essential that the stoop encroach onto the other property or could it be reconfigured so there would not be an encroachment. Ms. Rosati stated that she had not explored that option with the engineer nor the realtor and would like time to discuss the matter with them and bring the results back to the Board.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to defer this case for two weeks to allow the applicant time to obtain an executed easement and to explore the possibilities of either removing or otherwise dealing with the stoop encroachment and driveway issues. Staff suggested a hearing date of May 7, 1996. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 550, April 23, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JERRY L. CARBONE IRA ROLLOVER ACCOUNT AND MATTHEW T. CARBONE, VC 96-P-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into six lots, proposed Lots 3, 4, 5 and 6 having a lot width of 4.5 ft. Located on the N. side of Oakton Dr., approx. 200 ft. E. of Hibbard St. on approx. 3.20 ac. of land zoned R-2. Providence District. Tax Map 47-2 ((1)) 119B, 126 and 121E.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' agent, Ken Sanders, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated April 16, 1996. The applicant requested to subdivide three existing lots into six lots, with proposed Lots 3, 4, 5 and 6 having lot widths of 4.5 feet each. Additionally, a variance was requested to permit the dwellings on proposed Lots 3, 4 and 5 to be located 25.0 feet from the front lot line. Therefore a variance of 10.0 feet to the minimum front lot width requirement was requested for the dwellings.

Ken Sanders presented the applicants' request as outlined in the statement of justification submitted with the application. He submitted two letters of support from adjacent neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 96-P-007 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 16, 1996.

Chairman DiGiulian called for discussion.

Mr. Pammel stated he could not support the motion because of his concern over the length of the pipestem and the applicant did not meet two of the nine required standards for a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-007 by JERRY L. CARBONE IRA ROLLOVER ACCOUNT AND MATTHEW T. CARBONE, under Section 18-401 of the Zoning Ordinance to permit subdivision of three lots into six lots, proposed Lots 3, 4, 5, and 6 having a lot width of 4.5 feet, on property located at North side of Oakton Drive, approximately 200 feet East of Hibbard Street, Tax Map Reference 47-2 ((1)) 119B, 126, and 121E, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 3.2 acres.
4. The applicant has met the nine required standards for variance.
5. The shape of the lots are exceptional.
6. Staff gave a favorable report on the requested variance. (Staff report stated that it did not meet two standards for variance.)
7. The requested variance is compatible with development in the area.
8. The requested variance is in conformance with the Comprehensive Plan.

9. The average lot size is 18,515 square feet, which is compatible with the area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lots 119B, 121E and 126 as shown on the plat prepared by Bowman Consulting Group, dated November 22, 1995. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
3. Oakton Drive shall be constructed to the PFM TS-2, category I standard with face of curb set at 30 feet from curb to curb.
4. Access from the proposed Oakton Drive cul-du-sac shall be provided to Tax Map parcels 47-2 ((1)) 1, 1A, 122, 1C and 1B.
5. A sidewalk shall be constructed along the length of Oakton Drive.

- 6. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance. At the time of plan review of the overlot grading plans for each lot, the applicant shall develop a tree save and landscaping plan in cooperation with the Urban Forestry Branch, DEM.

Pursuant to Sect 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-1, with Mr. Pammel voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 552, April 23, 1996, (Tape 1), Scheduled case of:

9:30 A.M. MITCHELL FAMILY TRUST, Appeal 96-M-004 Appl. under Sect. 18-301 of the Zoning Ordinance. Determination that appellant has not complied with the proffered conditions associated with Rezoning Application RZ 94-M-039, is operating an office use without site plan and Non-RUP approval, and has erected signs without approval of sign permits, all in violation of the applicable provisions of the Zoning Ordinance. Located at 3401 Charles St. on approx. 10,106 sq. ft. of land zoned C-2, HC and SC. Mason District. Tax Map 61-2 ((18)) 1.

William Shoup, Deputy Zoning Administrator, stated that the appellant had requested a deferral of the appeal until May 7, 1996. Mr. Shoup said the appellants were informed by their agent, Mr. Hansbarger, that they could not operate their business and must remove their signs until after the hearing. The appellants have complied with both requests.

The following speaker came forward to speak to the request for deferral. Janet Hall, Mason District Planning Commissioner, 6424 Cavalier Corridor, Annandale, Virginia, said that she would support the deferral as long as the business does not operate and the signs for the business are removed.

Mr. Shoup advised the Board that the May 7, 1996 agenda already had several cases on it and suggested May 14, 1996 at 9:30 a.m. Vice Chairman Ribble made a motion to defer the case to the suggested date and hearing no objection the Chair so ordered.

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Page 552, April 23, 1996, (Tape 1), Scheduled case of:

9:30 A.M. SYED ASLAM ALI, Appeal 96-L-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has established a quick service food store and expanded the existing service station use without special exception approval and is maintaining outdoor storage in conjunction with the service station use in violation of Zoning Ordinance provisions. Located at 6117 Franconia Rd. on approx. 20,823 sq. ft. of land zoned C-5. Lee District. Tax Map 81-3 ((5)) 1A. (DEF. FROM 3/26/96 AT APPLICANT'S REQUEST.)

William Shoup, Deputy Zoning Administrator, said that he had a discussion with the appellant's agent, Mr. Williams, and they had requested a deferral.

Mr. Williams told the Board that this case was deferred from March 25, 1996 pending the filing of a special exception application. He said they received a letter from staff on April 15, 1996 with comments on the

Page 553, April 23, 1996, (Tape 1), SYED ASLAM ALI, Appeal 96-L-001, continued from Page ~~552~~

application, which was addressed in a revised plat that was submitted yesterday. The special exception application would address all the violations that have been occurring, with the exception of the outdoor storage items which have been removed. Mr. Williams said they are awaiting approval of the application from staff.

Mr. Hammack and Mr. Shoup discussed the length of time it would take a special exception to be heard before the Board of Supervisors.

Mr. Shoup told the Board that staff could not support a deferral for the following reasons. He said the adjoining property owner had stated that the appellants' activity was adversely impacting their business, the quick service food store was still operating in violation, and the length of time it could take for a special exception to be heard.

The following speaker came forward in opposition to the request for deferral. Ali Rasadi, owner of the restaurant adjoining the appellant's use, said the use of outdoor lifters and the high pressure blowing creates an unhealthy environment and inconvenience for his customers. He felt that the appellant's business was expanding beyond its capacity.

Chairman DiGiulian said he was in support of the deferral. He advised that he had recently been to the site and questioned the validity of the opposition.

Zia Hassan, an engineer with Design Management Group, said he had prepared and submitted the special exception plat. He stated they are diligently pursuing the special exception and want to get through the process as quickly as possible. Mr. Hassan added that they have proposed to provide additional parking spaces in the rear of the property to alleviate any future parking problems.

Chairman DiGiulian asked Mr. Shoup what violations were occurring. Mr. Shoup cited the makeshift bays at rear of the structure, an additional outdoor lift in back, and the operation of the quick service food store.

Mr. Kelley moved to defer this case for four weeks to insure that the appellants are not operating in violation, then at that time consider whether to defer until special exception is pursued. Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he could not support the motion unless the appellant would agree to cease the operations which were in violation.

The Board members further discussed the motion with the appellant's agent.

Mr. Dively moved to amend the motion and defer the case to May 14, 1996 at 9:30 a.m. in order to give the appellant time to answer any responses from staff reference the acceptance of the application. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 553, April 23, 1996, (Tape 1), Scheduled case of:

Approval of Resolutions
from April 16, 1996 hearing

Mr. McPherson moved to approve the resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 654, April 23, 1996, (Tape 1), Scheduled case of:

Approval of Minutes
from February 27, 1996 hearing

Mr. McPherson moved to approve the minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 654, April 23, 1996, (Tape 1), Scheduled case of:

Dismissal of Appeal 93-P-020
DPM Group, Inc.

Mr. Shoup advised the Board that the appellant was sent a copy of staff's request for dismissal but they had not been able to reach the appellant by phone. He said that the appellant's business had ceased operations; therefore, the appeal was now moot.

Mr. McPherson moved to dismiss the above appeal. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 654, April 23, 1996, (Tape 1), Scheduled case of:

Request for deferral
of Stanis Furniture Appeal

Mr. Ribble moved to deny the request for deferral. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 654, April 23, 1996, (Tape 1), Scheduled case of:

Request for Additional Time for SPA 91-Y-035-1
Tom V., Kimberly W., Joan J., and Tom V. III Richardson


Mr. Dively moved to grant the additional time which carried by a vote of 7-0. The new expiration date is May 13, 1997.

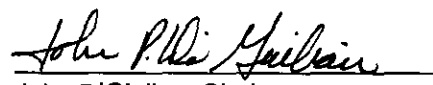
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As there was no other business to come before the Board, the meeting was adjourned at 10:18 a.m.

Minutes by: Teresa M. Wang

Approved on: June 18, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 30, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 555, April 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. FRANKLIN R. CUNNINGHAM, VC 96-L-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence 6.0 ft. high in front yard of a corner lot. Located at 3201 Sharon Chapel Rd. on approx. 15,403 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((8)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Cunningham, 3201 Sharon Chapel Road, Alexandria, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and said the applicant was requesting a variance of 2.0 feet in order to construct a 6.0 foot high fence in the front yard.

Mr. Cunningham said the house is sited in such a way that motorists can look directly into the back yard and the fence will reduce the traffic noise from Telegraph Road and provide a safe play area for his children. He said going up the hill from his yard toward Telegraph Road is a drainage ditch, a steep embankment, a metal railing, a three foot wide bike path, a retaining wall, and another steep embankment with trees. Mr. Cunningham added that the fence will be constructed 10 feet within his lot line and there are no objections from his neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 96-L-018 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-018 by FRANKLIN R. CUNNINGHAM, under Section 18-401 of the Zoning Ordinance to permit construction of fence 6.0 ft. high in front yard of a corner lot, on property located at 3201 Sharon Chapel Road, Tax Map Reference 82-4((8))1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.

3. The area of the lot is 15,403 square feet.
4. The applicant presented testimony that he does comply with the nine required standards for granting a variance described in the Zoning Ordinance; specifically, the unusual topography of the lot.
5. The proposed fence will sit back a sufficient distance so that it does not impair visibility from the adjacent property.
6. If it were not for the fact that the adjoining property has a driveway entrance, the applicant's property would qualify for a fence because of the major thoroughfare, Telegraph Road, which the property fronts.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific fence shown on the plat prepared by Kenneth White, dated January 25, 1996, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-0-1 with Mr. Hammack abstaining. Mr. Ribble was not present for the vote. The Board of Zoning Appeals waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN & LINDA SCHAKENBACH, VC 96-M-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.0 ft. from side lot line. Located at 4129 Downing St. on approx. 27,264 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((3)) 18.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Schakenbach, 4129 Downing Street, Annandale, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance of 8.0 feet in order to construct a carport 2.0 feet from the side lot line. On November 14, 1995, the BZA denied a request to allow construction of a carport .7 feet from the side lot line, but waived the 12-month waiting period for filing

a new application. Ms. Kelsey said the dwelling on adjacent Lot 17 is located 27.1 feet from the shared lot line, which was inadvertently noted as 15 feet in the staff report.

Ms. Schakenbach discussed why the proposed location was the most logical one for the construction and that they believed the concerns raised by the BZA at the public hearing held in November had been addressed. She submitted two petitions signed by the neighbors in support of the request.

Charles Cook, 4115 Downing Street, Annandale, Virginia, spoke in support of the request.

There were no speakers in opposition and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant VC 96-M-019 for the reasons noted in the Resolution and subject to the Development Conditions dated April 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-019 by JOHN AND LINDA SCHAKENBACH, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.0 feet from side lot line, on property located at 4129 Downing Street, Tax Map Reference 61-3((3))18, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 27,264 square feet.
4. The applicant has done a good job conforming the application to the Board's concerns brought out at the previous public hearing.
5. There are several letters in the file in support of the request.
6. The photographs are very illustrative of the problems that the applicants would have with any other adjustments that they might be able to make.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific carport shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated June 21, 1995, revised through February 1, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport shall be architecturally compatible with the existing dwelling.

Page 559, April 30, 1996, (Tape 1), JOHN & LINDA SCHAKENBACH, VC 96-M-019, continued from Page 558)

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 559, April 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CONNIE DESROSIERS, VC 96-M-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from side lot line. Located at 3435 Slade Run Dr. on approx. 15,724 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((30)) 76.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Connie Desrosiers, 3435 Slade Run Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the applicant was requesting a variance of 3.4 feet in order to enclose an existing screened porch which would be located 11.6 feet from the side lot line.

Ms. Desrosiers said the lot is unusually narrow with the house sited at an angle and the proposed location is the only logical place for the construction. She said they propose enclosing the existing breezeway to create an additional bedroom.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 96-M-016 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-016 by CONNIE DESROSIERS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.6 feet from side lot line, on property located at 3435 Slade Run Drive, Tax Map Reference 60-2((30))76, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,724 square feet.
4. The applicant has satisfied the nine required standards for granting a variance based upon the testimony presented at the public hearing.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition (enclosure of screened porch) shown on the plat prepared by Payne Associates, dated February 7, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BPG HOTEL PARTNERS I, L.P., VC 96-V-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of structures 21.0 ft. from street line of a corner lot. Located at E. of Silverbrook Rd., N. of Lorton Rd. and W. of Plaskett Ln. on approx. 2.86 ac. of land zoned C-8. Mt. Vernon District. Tax Map 107-4 ((1)) 1G.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C. Martin, Agent, WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the applicant was requesting a variance of 25.5 feet in order to construct a swimming pool, deck, and fence to be located 21.0 feet from one street line of a corner lot. Ms. Langdon said a four story hotel will also be constructed on the site and the pool and deck will be attached to the eastern side of the hotel.

Mr. Martin said the sales and marketing of the hotel have determined that a pool is critical to the success of the hotel especially in light of the recent closure of the Visitors Center. He said the pool will have no visual impact on the surrounding lots as it is not a raised structure and the subject property is surrounded by commercially zoned property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 96-V-017 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 23, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-017 by BPG HOTEL PARTNERS I, L.P., under Section 18-401 of the Zoning Ordinance to permit construction of structures 21.0 feet from street line of a corner lot, on property located East of Silverbrook Road, North of Lorton Road and West of Plaskett Lane, Tax Map Reference 107-4((1))1G, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

- 2. The present zoning is C-8.
- 3. The area of the lot is 2.86 acres.
- 4. The applicant has satisfied the nine required standards for the granting of a variance, in particular the applicant cited the unusual situation whereby the property has three front yards.
- 5. The request will not be detrimental in any way to the adjacent properties and will be in character with the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of additions (swimming pool, deck and fence) shown on the plat prepared by Dewberry & Davis, dated October 31, 1995, signed November 3, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The additions shall be architecturally compatible with the structure.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

Page 563, April 30, 1996, (Tape 1), BPG HOTEL PARTNERS I, L.P., VC 96-V-017, continued from Page 562

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 563, April 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. OLIVER POPENOE, VC 96-D-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into four lots, proposed Lot 2 having lot width of 10.64 ft., proposed Lot 3 lot width of 10.57 ft. and proposed Lot 4 lot width of 130.45 ft. Located at 501 Springvale Rd. on approx. 10.76 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 32 and 32A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Oliver Popenoe, 501 Springvale Road, Great Falls, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the applicant was proposing to divide two lots into four lots with proposed Lot 2 having a lot width of 10.64 feet, proposed Lot 3 having a lot width of 10.57 feet, and proposed Lot 4 having a lot width of 130.45 feet. Mr. Hunter said variances of 189.36 feet, 189.43 feet, and 69.55 feet were requested for Lots 2, 3, 4, respectively. He said the proposed density of .37 dwelling unit per acre is below the planned high density range of .2 to .5 dwelling unit per acre; however, although density is not an issue in this case staff was concerned with the proliferation of pipestem lots in an area where at least one lot width variance has already been approved. Mr. Hunter said while the subject property is larger than the average size of the lots in the immediate vicinity, this fact alone does not warrant the subdivision of the subject property as proposed and it was staff's opinion that the approval of this application would continue the undesirable precedent of other properties being subdivided by way of a variance. He noted that the applicant had submitted a plat of a by-right development which would yield a total of five lots having access to Springvale Road via way of a public street. Mr. Hunter added that Parkerhouse provides access to the property and to five lots west of the site and staff was of the opinion that it should be constructed as a public street providing a better access and the by-right development was preferable.

Mr. Popenoe said a by-right development plan would create four lots in excess of 75,000 square feet and one lot of approximately 2.6 acres which is where his house is located. This plan would require moving the existing road and putting in a large cul-de-sac. The variance request reduces the number of lots to four, two being in excess of 2 acres and two being in excess of 3 acres and keeps the existing road in its present position where it has existed for 40 years. Mr. Popenoe said his neighbors and the Executive Committee of the Great Falls Citizens Association prefer the plan which keeps the road in its present location and produces one less lot. He said financially he might be better off to develop the by-right, but he would prefer to develop the plan that has been approved by the neighbors.

Mr. Kelley asked if the applicant had read the development conditions in particular Condition Number 6 which required him to dedicate land for future road improvements. Mr. Popenoe said other property owners have dedicated land and he had no objections to doing so.

James Monroe, owner of Lot 33, spoke on his own behalf and his parents who own Lot 33B and said they would prefer to see the property developed into four lots as opposed to five in order to maintain the rural character of the area.

Thomas Scott, Jr., 500 Spring Vale Road, Great Falls, Virginia, owner of Lot 30, opposed the request because he did not believe Parkerhouse Road was capable of handling the increased vehicular traffic. He preferred the by-right plan which would require road improvements.

In rebuttal, Mr. Popenoe said under his plan Parkerhouse Road will be developed into a two lane 22 foot wide road.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Pammel noted that Parkerhouse Road currently serves six lots.

Mr. Kelley made a motion to grant VC 96-D-010 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 23, 1996.

Mr. Hammack said it was refreshing for an applicant to put the neighbors interest over his own, but that he would oppose the motion because it was a clear case of convenience since the applicant can develop the lot without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-010 by OLIVER POPENOE, under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into four lots, proposed Lot 2 having lot width of 10.64 feet, proposed Lot 3 lot width of 10.57 feet and proposed Lot 4 lot width of 130.45 feet, on property located at 501 Springvale Road, Tax Map Reference 7-2((1))32 and 32A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 10.76 acres.
4. The applicant meets the required standards.
5. There is no need for a public street.
6. The applicant should be commended for subdividing the property into four lots rather than five and for putting public interest before his own.
7. The applicant plans to widen Parkerhouse Road to 20 feet which is the same width as a County road.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;

- D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the subdivision of two (2) lots into four (4) lots, proposed Lot having a lot width of 10.64 feet, proposed Lot 3 having a lot width of 10.57 feet and proposed Lot 4 having a lot width of 130.45 feet as shown on the plat prepared by Runyon, Dudley, Associates, Inc. and dated December 19, 1995, revised through March 28, 1996.
- 2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and individual deeds to each lot and with the covenants, running with the land, to assure that future owners are aware of these restrictions.
- 3. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
- 4. Prior to subdivision plan approval, a tree save/tree preservation plan showing the limits of clearing and grading shall be submitted for review and approval by the Urban Forestry Branch, Department of Environmental Management (DEM) and implemented. This plan shall identify, locate and preserve individual mature, large and/or specimen trees and tree save areas on the site to the greatest extent possible as determined by the Urban Forestry Branch, DEM.
- 5. Parkerhouse Road shall continue to provide access to lots east of the subject property.
- 6. Right-of-way to thirty (30) feet from the centerline of Springvale Road, as shown on the variance plat, necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of subdivision plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded within the land

records of Fairfax County. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting aye. Mr. Hammack, Mr. Pammel, and Mr. McPherson voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 566, April 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. DAVID HENDERSON MARTIN, VC 96-D-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.8 ft. from side lot line such that side yards total 25.4 ft. Located at 6518 Heatherbrook Ct. on approx. 29,963 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 21-2 ((7)) 275.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Martin, 6518 Heatherbrook Court, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting variances of 4.2 feet to the side yard and 14.6 feet to the total side yards in order to construct a 14 foot high garage 7.8 feet from the western lot line such that side yards total 25.4 feet. Mr. Hunter said the variance on Lot 278 approved in 1989 expired prior to construction for lack of due diligence.

Mr. Martin said there are five automobiles in his family and the existing narrow driveway and garage will not accommodate more than two or three vehicles. He said the logical and sensible place to construct a second garage is at the end of the existing driveway because beyond the driveway the lot has a dramatic drop off, which precludes constructing a garage to the rear of the lot. Mr. Martin said prior to filing the application it was his understanding that the neighbors were not opposed, but has since learned this is not the case. He added that although Mr. Hunter indicated that he might be able to build the garage by-right if it were moved over and abutted to the house he would prefer not to do so but that he would be willing to explore the possibility.

There were no questions and Chairman DiGiulian called for speakers in support. Hearing no reply, he called for speakers in opposition.

The following came forward: Jodie Katz, 6520 Heatherbrook Court, McLean, the owners of Lots 279, 274, and 277; Lawrence Schonberger, attorney with Fagelson, Schonberger, Payne & Deichmeister, P.C., represented the Langley Oaks Homeowners Association; and, Thomas K. Moore, 6510 Anna Marie Court, McLean, Virginia, Vice-President of Langley Oaks Homeowners Association.

Following Mr. Katz' comments, Mr. Dively asked if she would still be opposed if the garage were moved over closer to the house. Ms. Katz said she would be if the woodland view was blocked. In response to a question from Mr. Dively, Mr. Hunter said staff believed moving the garage closer to the house would meet both the side and total side yard requirements.

The speakers did not believe the application met the variance standards, the lot is similar to other lots in the neighborhood, and pointed out that the Association's restrictive covenants prohibits the construction of a second garage.

In rebuttal, Mr. Martin said he was not aware of the restrictions in the covenants and said the neighbor's view will not be restricted. He again cited the topographical problems on his lot.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to deny VC 96-D-014 for the reasons noted in the Resolution. Mr. Pammel said granting the request would be for a convenience as opposed to a hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-014 by DAVID HENDERSON MARTIN, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.8 feet from side lot line, on property located at 6518 Heatherbrook Court, Tax Map Reference 21-2((7))275, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1(Cluster).
3. The area of the lot is 29,963 square feet.
4. Although there are topographical problems on the property as reflected in the pictures, the houses are pretty close together and this garage would violate the spirit of the setback requirements as it would be too close.
5. There was testimony that perhaps the applicant might be able to build the garage by right or certainly with a negligible variance request if the structure was moved over closer to the house.
6. The issue of covenants could be tried and heard in another tribunal.
7. The variance would be for convenience rather than a hardship.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996.

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Page 568, April 30, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES GEDDES, VC 96-P-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from street line of a corner lot and fence 5.9 ft. high to remain in front yard. Located at 2232 Richelieu Dr. on approx. 8,406 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 103.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Jim White, 8514 Electric Avenue, Vienna, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a 15.2 foot variance in order to construct a two-car garage to be located 14.8 feet from the front lot line. The applicant was also requesting approval of a 1.9 foot variance to allow a fence 5.9 feet high to remain in the front yard.

Mr. White said the applicant was proposing to construct a 22 x 20 foot wide garage to protect their vehicles from vandalism and would like approval to keep the existing fence.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked Mr. White if the existing concrete driveway would be removed and the area reseeded. Mr. White said that was correct.

A discussion took place between the BZA and the speaker regarding the sight distance and the height of the garage. Mr. White said there was no problem with the sight distance exiting the garage onto Richelieu. He added that the garage will be 13 feet high and submitted architectural drawings for the BZA's review. Mr. White explained that the dormer windows will be reconfigured as part of the renovations and noted that the garage cannot be constructed in the rear of the lot because the air conditioning unit and a gas line are located there.

Mr. Hammack made a motion to grant VC 96-P-015 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 23, 1996 with one addition: "4. The existing concrete driveway will be removed and the area resodded or reseeded. The variance for the fence is allowed up to the east corner of the new proposed driveway."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-015 by JAMES GEDDES, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.8 feet from street line of a corner lot and fence 5.9 feet high to remain in front yard, on property located at 2232 Richelieu Drive, Tax Map Reference 39-3((28))103, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,406 square feet.
4. This was an interesting and close case because the applicant was proposing to construct a large addition in an area that would normally have a front yard setback.
5. There appears to be approximately 50 plus feet between the closest corner of the garage and the corner of the lot and reducing the size garage would not make any significant impact on that.
6. There is no place on the lot that this kind of garage could be built without a variance of some sort.
7. The house is sited to the rear of the lot, but the lot is only 8,406 which does not give the applicant much room to work in on any direction.
8. Granting the variance will not change the character of the neighborhood.
9. It will in fact be in harmony with the intended spirit of the Ordinance and not contrary to the public interest.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage and fence shown on the plat prepared by Alexandria Surveys, Inc., dated August 31, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.
4. The existing concrete driveway will be removed and the area resodded or reseeded. The variance for the fence is allowed up to the east corner of the new proposed driveway.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-2 with Mr. Dively, Mr. Hammack, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting aye. Chairman DiGiulian and Mr. McPherson voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 570, April 30, 1996, (Tape 1), Scheduled case of:

9:30 A.M. LOWELL FINE, ETHEL FINE, Appeal 95-L-073 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants are maintaining outside storage in excess of 100 sq. ft., not contained to the rear half of the lot and not screened from a neighboring dwelling and are maintaining a junk yard for unlicensed and dismantled automobiles, all in violation of the applicable provisions of the Zoning Ordinance. Located at 5908 Erving St. on approx. 8,702 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (20) 5. (DEF. FROM 2/27/96)

William Shoup, Deputy Zoning Administrator, referenced staff's memorandum dated April 19, 1996, which recommended that the appeal be dismissed based on the appellant's failure to meet the notice requirement set forth in the Zoning Ordinance for the second time.

Lowell Fine, 5908 Erving Street, Springfield, Virginia, said when he appeared before the BZA in February he had hoped to have the issue resolved and was in the process of cleaning up the property when his brother suffered a heart attack on March 27, 1996, and underwent open heart surgery. Mr. Fine said since that time he has been living with his brother and helping him through his recovery; therefore, he was not at home to receive the notice package.

Chairman DiGiulian asked the speaker if he agreed that he was in violation of the Zoning Ordinance. Mr. Fine said that he did not since he has removed two of the vehicles which he had discussed with the Zoning Inspector. He noted that the other vehicles are all licensed with County stickers.

Mr. Kelley pointed out that the appellant had not done notices for the February 27th public hearing and asked if he had not at that time become fully aware of the notice requirements. Mr. Fine said he had, but had believed that by removing the two vehicles and obtaining licenses on the others would resolve the problem. Mr. Kelley said that did not address the notice violation. In response to a question from Mr. Kelley, Mr. Shoup said the post office attempted delivery on March 22nd, March 27th, and April 6th and after the third attempt returned the package to staff.

Following a discussion among the BZA members, Mr. Kelley made a motion to dismiss the appeal and the issue dealing with the classification of the vehicles dealt with the merits of the case and are irrelevant. Mr. Dively seconded the motion and added that based on the testimony it did not appear that the appellant intended to process the appeal, only to bring the lot into compliance with the County requirements which the appellant can still do.

A discussion took place between Mr. Hammack and Mr. Shoup as to whether the vehicles were classed as antique or junk.

The motion to dismiss the appeal carried by a vote of 6-1 with Mr. Hammack voting nay.

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9:30 A.M. GEORGE HERATH, Appeal 96-P-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is using a gray cinder block storage building on the site and a portion of the property for the storage of construction equipment and materials in the R-1 District in violation of Pars. 4 & 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8811 Lee Hwy. on approx. 3.33 ac. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((1)) 4.

William Shoup, Deputy Zoning Administrator, said at issue is the appellant's use of a portion of the property as well as a gray cinder block building located at the rear of the property being used for the storage of construction equipment and materials including junk and debris. Mr. Shoup said the building appears to have been constructed in the 1960's with an addition that was added in the mid to late 1960's without the benefit of a building permit. Inspections revealed that the appellant is allowing the building and a portion around the building to be used for the storage of construction equipment and materials by Thrasher Construction Company. Mr. Shoup submitted photographs to the BZA illustrating what was on the property in December 1995, which is the time frame the inspections were done and what prompted the Notice of Violation. He reiterated staff's position as outlined in the memorandum dated April 22, 1996.

Chairman DiGiulian asked how long the cinder block building had been on the site. Mr. Shoup said it was constructed sometime in 1962 or 1964.

George Herath, 4466 Bellwood Drive, Pomfret, Maryland, executor of the estate of George F. Krause, said he was not disputing the violation as presented by staff. He said the building was built in 1961 and used for 20 years until his father's death as a chicken coop. The building remained vacant until late 1994 when Mr. Thrasher asked if he could use the building to store some construction equipment. Mr. Herath said it appeared that his father had constructed the building without a permit and he would like an opportunity to apply for a permit in order to continue to use the building to store his personal items. He added that Mr. Thrasher has removed part of his equipment and is making a very diligent effort to find a place to relocate the remainder of the equipment and would like approximately 180 days to complete the relocation.

Chairman DiGiulian called for speakers. The following came forward to speak in support of the Zoning Administrator: Jane Layton, 2950 Chichester Lane, Fairfax, Virginia; Ione Stephens, 2932 Maple Lane, Fairfax, Virginia; and Vincent Monacella, 2908 Hideaway Road, Fairfax, Virginia.

The speakers said they would like the property cleaned up, the storage equipment removed, and the property brought into compliance with the Zoning Ordinance.

Chairman DiGiulian called for closing comments from staff and the appellant.

Mr. Shoup said there is no process which would allow the building to remain on the property and noted that staff has been working closely with the appellant and will continue to do so.

Mr. Herath pointed out that the construction equipment has been on the property for approximately 28 years and that he had been unaware of any zoning requirements until his father passed away. He asked that Mr. Thrasher be given an opportunity to relocate the remainder of the construction equipment.

The public hearing was closed.

Mr. Pammel made a motion to uphold the Zoning Administrator's determination in Appeal 96-P-009. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 572, April 30, 1996, (Tape 1), Information Item:

Approval of Resolutions from the April 23, 1996 hearing.

Mr. McPherson made a motion to approve the Resolutions as submitted. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 572, April 30, 1996, (Tape 1), Information Item:

Approval of March 12 and March 19, 1996 Minutes

Mr. McPherson made a motion to approve the Resolutions as submitted. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 572, April 30, 1996, (Tape 1), Information Item:

Out of Turn Hearing Request
SP 96-Y-011, John Woodward

Mr. Dively asked the earliest date that the case could be heard since it did not appear to be complicated. Jane Kelsey, Chief, Special Permit and Variance, suggested that the case be added to the next

advertising date in early June if it was the BZA's intent to grant the out of turn hearing. Mr. Dively so moved. Mr. Kelley seconded the motion which carried by a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 12:00 Noon

Minutes by: Betsy S. Hurtt

Approved on: June 18, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 7, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:08 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 575, May 7, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PAUL H. PARKER, VC 96-S-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 28.6 ft. from front lot line and 8.9 and 10.1 ft. from side lot line. Located at 7906 Jansen Ct. on approx. 11,693 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (4) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Paul H. Parker, 7906 Jansen Court, Springfield, Virginia replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated April 30, 1996. The applicant requested a variance of 1.4 feet to the minimum front yard requirement, 3.1 feet and 1.9 feet to the minimum side yard requirement.

Mr. Parker presented his request as outlined in the statement of justification submitted with the application.

Mr. Hammack asked the applicant if he would be willing to remove the existing concrete driveway. Mr. Parker replied affirmatively.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-S-024 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 30, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-024 by PAUL H. PARKER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 28.6 feet from front lot line and 8.9 and 10.1 feet from side lot line, on property located at 7906 Jansen Court, Tax Map Reference 89-2 ((4)) (4) 12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,693 square feet.
4. The applicant met the nine required standards for variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage, porch and enclosed carport additions shown on the plat prepared by Kenneth W. White, Land Surveyor, dated September 5, 1995, and revised through October 31, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The garage, porch and enclosed carport additions shall be architecturally compatible with the existing dwelling.
4. The existing concrete driveway shall be removed upon completion of additions and the area shall be resodded or reseeded.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PATRICIA C. ACKERMAN & THOMAS L. FAIRBANK, VC 96-L-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.7 ft. from side lot line. Located at 7053 Barbara Rd. on approx. 22,000 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 33.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Thomas L. Fairbank, 7053 Barbara Road, Alexandria, Virginia replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated April 30, 1996. The applicant requested a variance of 12.3 feet to the minimum side yard requirement.

Mr. Fairbank presented his request as outlined in the statement of justification submitted with the application. He submitted three letters of support from adjacent neighbors.

Mr. Pammel asked Mr. Fairbank if he would be willing to have a 22.0 foot wide garage in lieu of the 24.0 feet he had proposed. Mr. Fairbank said that the reason for the 24.0 foot width was so the ridge line of the garage would be perpendicular to the existing house. He also stated that the width included the overhang for the eaves; the actual width, from wall to wall inside the garage, would be smaller than 24.0 feet.

Mr. Hammack asked the applicant what the rear of the garage would be used for. Mr. Fairbank replied it would be used as a combination storage and workshop area.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-L-022 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 30, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-022 by PATRICIA C. ACKERMAN AND THOMAS L. FAIRBANK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.7 feet from side lot line, on property located at 7053 Barbara Road, Tax Map Reference 91-3 ((3)) 33, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,000 square feet.
4. The applicant met the nine required standards for variance.
5. The structure is old and placed in an unusual location on the lot.
6. The property is zoned R-1; however, the lot area is comparable to a R-2 zoning category.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Additions, Inc., dated November 11, 1995 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MINA AND FARROKH FRACYON, VC 96-P-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line. Located at 10009 Clearfield Ave. on approx. 21,941 sq. ft. of land zoned R-1. Providence District. Tax Map 38-3 ((7)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Farrokh Fracyon, 10009 Clearfield Avenue, Vienna, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated April 30, 1996, prepared by Lori Greenlief. The applicant requested a variance of 5.0 feet to the minimum side yard requirement. Ms. Kelsey noted that in 1992, the applicant was granted a variance to allow a garage with a second story 15.0 feet from the side lot line, but that variance approval expired. The applicants were planning a complete redesign of the existing dwelling and a sketch was included in the staff report.

Mr. Fracyon presented his request as outlined in the statement of justification submitted with the application.

In response to Mr. Hammack's question, Mr. Fracyon said he had a septic field to the rear of his property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant VC 96-P-021 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 30, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-021 by MINA AND FARROKH FRACYON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from side lot line, on property located at 10009 Clearfield Avenue, Tax Map Reference 38-3 ((7)) 2, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,941 square feet.
4. The applicant met the nine required standards for variance.
5. The requested variance is essentially the same as the first approved variance in 1992.
6. The property is zoned R-1 but has the lot size of an R-2 zoning category.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (garage) shown on the plat prepared by Rice Associates, dated January 28, 1991, revised through January 20, 1996 by Farrokh Fracyon, AIA, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition and accessory structure shall be architecturally compatible with the existing dwelling.

Page 581, May 7, 1996, (Tape 1), MINA AND FARROKH FRACYON, VC 96-P-021, continued from Page 580

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 581, May 7, 1996, (Tape 1), Scheduled case of:

9:00 A.M. VIRGINIA G. RE, VC 96-M-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. from side lot line and accessory structure 10.0 ft. from rear lot line. Located at 6125 Brook Dr. on approx. 9,600 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((19)) (H) 17.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Virginia Re, 6125 Brook Drive, Falls Church, Virginia replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had requested a variance to allow an accessory structure 10.0 feet from the rear lot line and to allow an addition to the house 3.0 feet from the side lot line; however, after a discussion with the applicant and her contractor, they indicated they were proposing the garage to be included in one structure. Ms. Kelsey advised the Board that the advertising would have to be redone in order to show this change in request. A sketch was provided by the applicant but it was not a certified plat and did not show the exact location of the addition to the lot lines. Ms. Kelsey suggested the case be deferred to July 16, 1996 at 8:00 p.m.

Ms. Re advised the Board that it would be difficult for her to attend a night meeting.

Chairman DiGiulian called for speakers to the deferral.

Ed Pretzsch, 6123 Brook Drive, Falls Church, Virginia, stated that the request appeared to be basically the same as to what was originally advertised and the change did not alleviate his opposition to the variance request. Mr. Pretzsch requested that if the case must be deferred, that the Board put it on a day meeting.

Ms. Kelsey suggested a hearing date of July 23, 1996 at 9:00 a.m. Mr. Dively so moved. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 581, May 7, 1996, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM H. ANDERSON, VC 95-H-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 8599 Coral Gables Ln. on approx. 8,698 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 29-3 ((14)) 13. (MOVED FROM 3/5/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, William H. Anderson, 8599 Coral Gables Lane, Vienna, Virginia replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated April 30, 1996, prepared by Lori Greenlief. The applicant requested a variance of 8.0 feet to the minimum rear yard requirement.

Mr. Anderson presented his request as outlined in the statement of justification submitted with the application. He submitted photographs of his property to the Board.

In response to questions from the Board, Mr. Anderson stated that Lot 12 is located on a pipestem driveway and the garage side of that house faced his backyard.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 95-H-142 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 30, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 95-H-142 by WILLIAM H. ANDERSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.0 feet from rear lot line, on property located at 8599 Coral Gables Lane, Tax Map Reference 29-3 ((14)) 13, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 8,698 square feet.
4. The applicant met the nine required standards for variance.
5. The lot is narrow which prohibits the applicant from building on either side of the house.
6. The lot is shallow.
7. The lot has topographic conditions.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific addition (screened porch) shown on the plat prepared by Terry Land Measurement, Inc., dated October 3, 1995, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 583, May 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. MARITA WILLOUGHBY, SP 96-S-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 23.1 ft., 3.1 ft. and 2.0 ft. from side lot line. Located at 13310 Compton Rd. on approx. 5.67 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's finance, Paul Borrow, replied that it was. The applicant, Marita Willoughby, 13310 Compton Road, Centreville, Virginia was present at the hearing but due to a recent operation she had Mr. Borrow speaking for her.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated April 30, 1996. The applicant requested a special permit for error in building location of 16.9 feet to the minimum side yard requirement for a barn, 36.9 feet to the minimum side yard requirement for a shed, and 18.0 feet to the minimum side yard requirement for a storage shed. Ms. Langdon noted that the applicant had filed this request as a result of a notice of violation from the Zoning Enforcement Branch. The applicant had also filed an appeal that was heard before the BZA on March 26, 1996, and at that hearing the BZA upheld the decision of the Zoning Administrator.

Mr. Borrow presented the applicant's request as outlined in the statement of justification submitted with the application. He submitted photographs of the structures to the Board.

Mr. Kelley asked Mr. Borrow why the applicant had obtained a building permit for the barn and then built it larger and closer to the lot line than what was permitted. Mr. Borrow said the original barn was built in accordance with the permit and then the applicant had added an addition to the north side of the barn. When Mr. Kelley pointed out to Mr. Borrow that his explanation did not fit with the total measurement of the barn to the lot line, he stated that the building must have been placed in the wrong location in error.

Mr. McPherson asked Mr. Borrow what the smaller shed was being used for. Mr. Borrow said it was used for storing hay and seasonal accessory items for a tractor.

The following spoke in opposition. Joan Ozdogan, 13230 Compton Road, Clifton, Virginia; Allan Harvey, 1018 Desalle Street. Their main issues dealt with the belief that the placement of the two storage sheds were not innocent mistakes and that the applicant built them to support a commercial business.

Mr. Dively questioned staff whether there was a commercial business being operated on the property in violation of the zoning. Ms. Langdon said that the Zoning Inspector had cited the applicant for operating a riding stable; however, the applicant has agreed to cease operating the business.

In rebuttal, Mr. Borrow said that they have not increased any pedestrian or vehicle traffic along the Ozdogan's property; they have ceased operating their riding business; and that removal of the structures would create a financial burden.

Mr. McPherson again discussed with Mr. Borrow how the original barn was erected in violation.

Roger Simms, Zoning Inspector, Zoning Enforcement Branch, stated that since the violation had been issued the applicant had enclosed and enlarged the 10 by 30 foot barn to include additional horse stalls; therefore, the barn had doubled in width to 20 by 30 feet. Mr. Simms also stated that as of a few days ago, the applicant appeared to still be operating her riding business.

In rebuttal, Mr. Borrow said that the barn was enclosed before they were aware of the notice of violation. He restated that they were no longer operating the riding business.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SP 96-S-003 for the reasons set forth in the Resolution.

Chairman DiGiulian called for discussion.

Mr. Dively stated that he could not vote for this motion because he marginally disagreed with it. He said in regard to the two sheds, there wasn't sufficient evidence to show it was done in good faith. However, he felt the barn was more marginal and he would vote to approve it. He said he understood that it differed with the building permit but it had been at that location for a long time and was not detrimental to the adjacent neighbors.

Mr. Pammel stated that he shared some of Mr. Dively's comments but he also felt the barn would have to be brought into compliance with the building permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-S-003 by MARITA WILLOUGHBY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 23.1 feet, 3.1 feet and 2.0 feet from side lot line, on property located at 13310 Compton Road, Tax Map Reference 75-1 ((1)) 24, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 5.67 acres.
4. The applicant met most of the required standards for a special permit, with the exception of good faith.
5. The barn structure was built in non-compliance with a Building permit.
6. All the structures were built to support the operation of a business.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 6-1, with Mr. Dively voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996.

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Page 585, May 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. ROGER MODY, SP 96-S-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit stairs to remain 10.6 ft. from side lot line. Located at 6508 Burke Woods Dr. on approx. 36,001 sq. ft. of land zoned R-1. Springfield District. Tax Map 88-1 ((23)) 23A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Roger Mody, 6508 Burke Woods Drive, Burke, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated April 30, 1996. The applicant requested a special permit for error in building location of 4.4 feet to the minimum side yard requirement for stairs.

Mr. Mody presented his request as outlined in the statement of justification submitted with the application.

He added that he had spoken to the adjacent neighbors and they do not object to the special permit request.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 96-S-005 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 30, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-S-005 by ROGER MODY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit stairs to remain 10.6 feet from side lot line, on property located at 6508 Burke Woods Drive, Tax Map Reference 88-1 ((23)) 23A1, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified stairs shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Elizabeth L. Thurber, P.E., dated February 18, 1996, revised February 22, 1996, submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 587, May 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. STEPHEN L. FORSELL, VC 96-P-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 5.3 ft. and stoop 0.0 ft. from side lot line. Located at 2400 Spring St. on approx. 29,341 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((4)) (B) 1 and 2. (DEF. FROM 4/23/96 AT APP.'S REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Michelle Rosati, the law firm of Lawson and Frank, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that this case was deferred from April 23, 1996 so the applicant could provide the Board with an executed easement, a copy of the contracts, and address the stoop issue.

Ms. Rosati submitted a new variance plat and stated that the modifications included removal of the stoop and driveway encroachment. Ms. Rosati also submitted contracts and an executed easement to the Board.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 96-P-013 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 16, 1996.

Chairman DiGiulian called for discussion.

Mr. McPherson said he wanted to add that the applicant and Ms. Rosati had done a good job of complying with the Board's requests and this was now a good variance application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-013 by STEPHEN L. FORSELL, under Section 18-401 of the Zoning Ordinance to permit structure to remain 5.3 feet and stoop 0.0 feet from side lot line, on property located at 2400 Spring Street, Tax Map Reference 39-4 ((4)) (B) 1 and 2, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 29,341 square feet.
4. The applicant made the effort to remedy most of the serious issues previously raised by the Board.
5. The main concern was over the easement issue, which the applicant has remedied by submitting an executed easement.
6. The location of the stoop is a minor issue.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the specific dwelling and stoop shown on the plat prepared by Kephart & Company, dated October 16, 1995, revised through December 14, 1995 submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless a copy of the Revised House Location plat is submitted to Zoning Permit Review Branch, Zoning Administration Division of the Office of Comprehensive Planning. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 5-1, with Mr. Pammel voting nay. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 1996. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:20 a.m. and reconvened at 10:34 a.m.

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Page 589, May 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. SHEDQUARTERS, INC., Appeal 96-V-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the denial of minor site plan by the Department of Environmental Management. Located at 6027 Richmond Hwy. on approx. 33,538 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) pt. 57.

William C. Thomas, the appellant's agent, said that he had talked with Edward Jankewicz, Director, Design Review Division, and felt that given appropriate time and working with the DEM staff, they could resolve their issues over the minor site plan. Mr. Thomas said that the applicant had not been opposed to making reasonable improvements in order to get a minor site plan approved. Mr. Thomas requested that the Board defer this case until they can work with DEM to resolve this problem.

Chairman DiGiulian asked staff their position on the request for deferral. Yong Paek, Site Review Branch, Department of Environmental Management, said they were not opposed to the deferral.

William Shoup, Deputy Zoning Administrator, advised the Board that the appellants were only appealing the site plan denial. He wanted the Board to be aware that this was still an existing violation and requested that the hearing not be deferred for too long.

Mr. Shoup suggested a deferral date of August 13, 1996. Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 590, May 7, 1996, (Tape 1), Scheduled case of:

9:30 A.M. JAMES D. GEREN, D.D.S., Appeal 96-V-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a dental office in the R-2 District in violation of Par. 5, Sect. 2-302 of the Zoning Ordinance. Located at 2212 Sherwood Hall Ln. on approx. 16,809 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((26)) 3.

William Shoup, Deputy Zoning Administrator, advised the Board that the notices were not in order for this appeal. He said that William C. Thomas, agent for the appellant, had just taken over this case and had sent in a letter requesting a deferral. Mr. Shoup said that after talking with Mr. Thomas they had agreed to a deferral date of September 10, 1996.

Mr. McPherson so moved. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 590, May 7, 1996, (Tape 1), Scheduled case of:

Approval of Resolutions
from the April 30, 1996 hearing

Mr. Pammel moved to approve the Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 590, May 7, 1996, (Tape 1), Scheduled case of:

Approval of Minutes
from the October 31, 1995 and March 5, 1996 hearings

Mr. Pammel moved to approve the Minutes. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 590, May 7, 1996, (Tape 1), Scheduled case of:

Request for Additional Time
for VC 93-V-074, Margaret A. Coyle

Mr. Kelley moved to grant the request for additional time for VC 93-V-074. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote. The new expiration date is April 20, 1999.

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Page 590, May 7, 1996, (Tape 1), Scheduled case of:

Request for Change in Permittee for SPA 78-C-055-1,
The Church at Northern Virginia-Whole World Fellowship and the Dominion School

Mr. Kelley moved to grant the request for change in permittee from The Church at Northern Virginia-Whole World Fellowship and the Eldin School to The Church at Northern Virginia-Whole World Fellowship and the Dominion School. Mr. Dively seconded the motion which carried by a vote of 7-0.

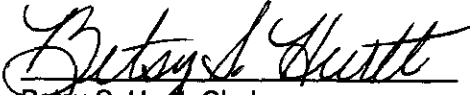
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Page 591, May 7, 1996, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:42 a.m.

Minutes by: Teresa M. Wang

Approved on: July 9, 1996


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 14, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 593, May 14, 1996, (Tape 1), Scheduled case of :

9:00 A.M. DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 for church and related facilities to permit increase in land area, building additions, nursery school and child care center. Located at 11720 Sugarland Rd. on approx. 8.69 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) pt. 66, 67 and 70.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Merrill, 1589 North Village Road, Reston, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated May 7, 1996. The special permit request was for an increase in land area, building additions, a nursery school and child care center which was to be done in three phases. Ms. Powell said the application was in harmony with the Comprehensive Plan and meets all applicable standards for a special permit and that staff recommended approval. Ms. Powell informed the Board that Chuck Almquist from the Office of Transportation was present to answer questions concerning transportation issues.

Mr. Merrill, the applicant's agent, presented the applicant's request as outlined in the statement of justification submitted with the application. He presented drawings of the proposed site. Mr. Merrill discussed concerns the applicant had with Development Condition #10, #12, and #13.

There was discussion between the Board members and Mr. Merrill about the concerns with the development conditions.

Mr. Almquist also commented on the staff's belief that a right turn lane should be provided into the church site, with which the church disagreed. He elaborated on the future volume of traffic that the expansion of the Fairfax County Parkway will generate.

Chairman DiGiulian called for speakers. Anna Lavagnino, 11801 Sugarland Road, spoke in opposition expressing concerns about traffic issues. She also wanted to know if the residents' well water was going to be affected by the church's expansion.

Staff informed the speaker that the church would use public water and that they would not affect the residents' well water.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 83-D-022 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-D-022 by DRANESVILLE UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 83-D-022 for church and related facilities to permit

Page 594, May 14, 1996, (Tape 1), DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022, continued from Page 593)

increase in land area, building additions, nursery school, and child care center, on property located at 11720 Sugarland Road, Tax Map Reference 6-4((1))pt. 66,67 and 70, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 8.69 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 11720 Sugarland Road (8.69 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Greenhorne & O'Mara dated January 4, 1996, revised through April 2, 1996, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum daily enrollment for the nursery school and child care programs, including the Mother's Day Out program, shall not exceed 90 children.
6. The nine existing paved parking spaces located on the lot line at the northeast corner of the site shall be deleted. The asphalt shall be removed and that portion revegetated.
7. A minimum of seventy-four (74) parking spaces shall be provided in Phase 1. The remainder of the 174 parking spaces shall be provided when the sanctuary is constructed. All parking shall be on site. As shown on the special permit plat.
8. The hours of operation for the nursery school and child care center, including the Mother's Day Out program, shall be limited to Monday-Friday, 6:30 a.m. to 6:30 p.m.

9. Transitional screening requirements shall be modified and barrier requirements shall be waived along the northern and southern lot lines. Existing vegetation shall be preserved and maintained along these lot lines and shall satisfy the requirements of Transitional Screening 1.

The applicant shall accurately delineate the boundaries of the cemetery and shall work with DEM to determine the extent to which Transitional Screening 1 can be provided from the cemetery's southern boundary to the northern lot line. Based upon that determination, the number, size and species of landscaping materials shall be determined by DEM, and Transitional Screening 1 shall be met to the extent possible.

Before using the remainder of the site for more than one lot, the applicant shall apply to Fairfax County for a resubdivision. Prior to subdivision, the applicant shall provide Transitional Screening 1 between the western parking areas and the proposed residential lots.

10. The stormwater management facility shall be constructed with as little clearing and grading as possible. Final location shall be determined by DEM at the time of site plan review.
11. A second stormwater management facility may be located in the southwest portion of the site to collect runoff from the proposed driveway. If this second stormwater management facility is not needed, then the area in the southwest portion of the site shall be part of the proposed future subdivision, and an amendment to this Special Permit shall not be required for this to occur.
12. The applicant shall construct the proposed driveway and discontinue use of the existing driveway prior to issuance of the non-Residential Use Permit for Phase 1.
13. Right-of-way to 45 feet from the existing centerline of Sugarland Road necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand from the Virginia Department of Transportation or at the time of site plan approval whichever occurs first. Ancillary easements shall be provided to fifteen (15) feet behind the new right-of-way line. An eastbound left turn lane on Sugarland Road into the site in Phase 1 and right turn deceleration shall be provided, as determined by the Director of DEM.
14. The following areas shall be tree save areas in which existing trees shall be preserved, except for dead and dying trees: 1) the eastern portion of the site labeled "possible tree save area" on the plat and; 2) the area in the western portion of the site outside the limits of clearing and grading after the location of the stormwater management facility has been determined. No further clearing and grading shall be permitted except the minimum amount necessary for the development shown on the plat.
15. Any proposed lighting of the parking areas shall be in accordance with the following:
- ▶ The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - ▶ The lights shall focus directly onto the subject property.
 - ▶ Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.
16. The existing dwelling may be used for church related uses or for a dwelling for ministers or caretakers of the church.

These development conditions incorporate and supersede all previous development conditions and shall be implemented with the first phase, unless otherwise noted.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The implementation for Phase 1 shall establish the use. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 596, May 14, 1996, (Tape 1), Scheduled case of :

9:00 A.M. THE ENTERPRISE SCHOOL, SPA 85-C-049-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-049 for private school of general education to permit change in development conditions and continuation of use. Located at 1629 Beulah Rd. on approx. 4.50 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 13. (MOVED FROM 5/21/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michele E. Surwit, 1629 Beulah Road, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report dated May 7, 1996. The special permit request was to allow the removal of the term limit for the private school. Ms. Langdon said the application was in harmony with the Comprehensive Plan and that staff recommended approval. She noted one letter of opposition.

Mr. Pammel referenced the opposition letter and asked why was there a discrepancy with the time the school opened and the time stated in the development conditions.

Ms. Langdon said the applicant had verbally informed staff that the school was in compliance with the conditions.

Ms. Surwit presented the applicant's request as outlined in the statement of justification submitted with the application. She was unsure of why there was a discrepancy with the time.

Mr. Pammel said the application was not advertised to change the time and that the school must operate according to the development conditions. He asked Ms. Surwit if the applicant would be willing to operate according to the development conditions or would they want to amend the special permit application.

Ms. Surwit replied that the applicant would prefer to amend the application.

Mr. Pammel moved to defer SPA 85-C-049-3 to the morning of July 30, 1996 to amend the application. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

(At the BZA's meeting of May 21, 1996, the BZA reconsidered its decision to defer the case until July 30, 1996-See minutes for May 21, 1996.)

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Page 597, May 14, 1996, (Tape 1), Scheduled case of :

9:00 A.M. KYUNG KIM, SPA 84-M-072-2 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 84-M-072 for indoor baseball academy and certain indoor commercial recreation uses to permit additional uses and change of applicant. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21 and 22. (Concurrent with VC 94-M-073). (MOVED AT APPL'S. REQ. FROM 10/25/94, 11/29/94, 2/21/95, 3/28/95, 6/6/95, 7/25/95, 10/10/95, 12/12/95 AND 4/23/96).

9:00 A.M. DOME BUILDING PARTNERSHIP/KYUNG KIM, VC 94-M-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking to remain 1.5 ft. from front lot line and to vary the peripheral parking lot landscaping strip requirement. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21 and 22. (Concurrent with SPA 84-M-072-2). (MOVED AT APPL'S. REQ. FROM 10/25/94, 11/29/94, 2/21/95, 3/28/95, 6/6/95, 7/25/95, 10/10/95, 12/12/95 AND 4/23/96).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy Steele, the applicant's agent, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated May 7, 1996. The applicant requested a variance of 8.5 feet to the minimum front yard requirement and 4.0 feet to the minimum side yard requirement. The special permit requested was to allow additional uses and a change in applicant. Mr. Hunter said the initial request was too intense and was not a feasible application. He said the previous request was for 230 patrons on site at any one time, but that the application had since been amended to request 72 patrons on site at any one time. Mr. Hunter stated that the application was in harmony with the Comprehensive Plan and that staff recommended approval of the special permit application.

Mr. Hammack inquired about a comment included in the staff report pertaining to the application's consistency with the long term goal of revitalizing and upgrading the Bailey's Crossroads Community Business Center. He asked staff what was considered offensive in the implementation of the uses.

Mr. Hunter said in staff's opinion when the application was first approved in 1984, there was a term limit of ten years set. He said it was staff's opinion then and now that the revitalization of the area consisted of the incorporation of retail and other uses. Mr. Hunter stated that the use of the site as indoor recreation did not fit in with the Plan's goal for the area but that it was not considered offensive. He said the Plan did recognize the use as a grand fathered use.

Mr. Hammack noted a letter in opposition from the Bailey's Crossroads Revitalization Corporation referring to trash, general uncleanliness of the area and problems with overflow parking. He asked had there been any complaints with reference to the property.

Mr. Hunter replied that staff was not aware of any recent complaints specifically from the residential area nor had there been any complaints about the trash.

Mr. Hammack asked if the Board limited the number of patrons to 72 would staff believe that the existing parking was adequate.

Mr. Hunter replied affirmatively.

Mr. Pammel asked who would monitor the number of patrons. He expressed concern about the proposed uses which might draw more than 72 patrons, such as televising events or having a dance.

Mr. Hunter said staff had made the applicant aware that a shared parking agreement was not feasible; therefore, the applicant would be limited to the number of patrons. He said the applicant had agreed to comply with that condition.

Tracy Steele, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubely P.C., presented the applicant's request as outlined in the statement of justification submitted with the application. She said the application was filed to bring the existing uses into compliance with the Zoning Ordinance. Ms. Steele

said that the proposal was consistent with prior approvals and the application would not have any adverse effects on the surrounding businesses or existing road networks because the facility would primarily operate in the evenings and on weekends. She stated that the applicant requested that the Board of Zoning Appeals incorporate the current hours of operation into Condition #7 of the May 7, 1996, proposed development conditions. Ms. Steele stated that the modified hours would have little impact on traffic.

Mr. Pammel asked how the applicant would monitor of the number of patrons.

Ms. Steele said the applicant was aware of the limitations of the number of patrons and considering that the applicant promotes mostly league play, monitoring the number of individuals on the site would be fairly easy. She said with leagues there is a limited number of individuals allowed on the courts or on the fields at one time and based on that, the applicant should be able to monitor the number of patrons.

The Board members and the applicant continued discussing monitoring the number of patrons. The Board found that there is a specific interior layout in the facility for the uses which have been the same for years and that some uses could not operate concurrently due the limitation of patrons.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SPA 84-M-072-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 84-M-072-2 by KYUNG KIM, under Section 4-803 of the Zoning Ordinance to amend SP 84-M-072 for indoor baseball academy and certain indoor commercial recreation uses to permit additional uses and change of applicant, on property located at 5633 Leesburg Pike, Tax Map Reference 61-2((21))1,2,19,20,21,and 22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is C-8, HC and SC.
3. The area of the lot is 2.09 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and consists of 22,000 square feet of gross floor area on the second floor with associated parking spaces and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use, including the provision of parking pursuant to Development Condition No. 5, below.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles P. Johnson & Associates, P.C. dated April, 1994, revised through February 17, 1996 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. Twenty-seven (27) parking spaces shall be provided for this use and all parking for the use shall be provided on-site. The maximum number of persons excluding employees permitted in the facility at any one time shall not exceed 72. If the number of parking spaces shown on the special permit plat must be reduced from the 27 shown on the plat in order to meet the requirements of the Public Facilities Manual (PFM) or so that adequate parking is provided for all uses on site as determined by DEM, the number of patrons shall be reduced at a ratio of three patrons for each parking space lost.
6. The maximum number of employees on site at any one time shall not exceed three (3).
7. The maximum hours of operation shall be 3:00 p.m. to 12 midnight, Monday-Thursday; 3:00 p.m. to 2:00 a.m., Friday; 8:00 a.m. to 2:00 a.m., Saturday; and 8:00 a.m. to 12:00 midnight, Sunday.
8. The use of the facility shall be limited to indoor soccer, floor hockey, lacrosse and volleyball leagues, pay-per-view sporting events, occasional dances and the small eating area and the pro shop.
9. The southernmost entrance to the site adjacent to Route 7 shall be an "entrance only". The travel aisle along the southeastern portion of the site shall be signed and striped to allow for a "one-way, entrance only" circulation pattern. The parking geometrics shall meet the requirements of the PFM as determined by the Director, DEM.
10. Streetscape treatments shall be provided on site as follows:

the existing planter boxes shown on the special permit plat shall be replanted with shrubs and flowering plants;

one street tree shall be added to the two existing trees along Leesburg Pike; and

additional large planters shall be located along the frontage of the site adjacent to Leesburg Pike in a manner that prevents access to the five parking spaces in front of the building.

The type, amount and size of the plant material shall be determined by DEM.
11. The pro shop shall only sell equipment to patrons of the facility unless additional parking is provided in accordance with Article 11.

12. This special permit amendment shall expire on May 14, 2001.

These conditions supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, nine (9) months after the date of approval* unless a Non-Residential Use Permit has been obtained for this use. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1996. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to grant VC 94-M-073 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 7, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-073 by DOME BUILDING PARTNERSHIP/KYUNG KIM, under Section 18-401 of the Zoning Ordinance to permit parking to remain 1.5 feet from front lot line and to vary peripheral parking lot landscaping strip requirement, on property located at 5633 Leesburg Pike, Tax Map Reference 61-2((21))1,2,19,20,21,and 22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owner and the lessee of the land.
2. The present zoning is C-8, HC and SC.
3. The area of the lot is 2.09 acres.
4. The applicant met the nine required standards for a variance.
5. The building was constructed in 1950 and at such time the requirements were not in effect.
6. The applicants would suffer a significant hardship if the variance was not granted.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Charles P. Johnson & Associates, P.C. dated April, 1994, revised through February 17, 1996 and is not transferable to other land.

Mr. McPherson seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 601, May 14, 1996, (Tape 1), Scheduled case of :

9:00 A.M. ELMWOOD L.L.C., VC 96-L-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings less than 200 ft. from the right-of-way of I-95. Located at 5510 Linnean St. on approx. 13.94 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 9; 82-2 ((3)) (D) B. (DEF. FROM 4/16/96 AT APP.'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, agent for the applicant, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report addendum dated May 14, 1996. Mr. Hunter said staff had several concerns with the proposed development. Some concerns included the impact of highway noise on the proposed dwellings, the location of a Resource Protection Area (RPA) in the western portion of the site and the presence of an Environmental Quality Corridor (EQC) associated with the westernmost stream which flows through the property. He noted that the site was the subject of variance application V-206-79 approved by the Board of Zoning Appeals on September 11, 1979. The variance allowed a subdivision into 48 lots with proposed lots 1-25 having insufficient depth to allow construction of houses according to the 200-foot setback of interstate highways. The variance expired due to lack of due diligence. Staff's opinion was that the application did not meet the standards for a variance and was in conflict with the Comprehensive Plan. On April 3, 1996, the Planning Commission held an administrative hearing on the application which ended in a tie vote of 4-4 without a recommendation that the BZA either approve or deny the application. Mr. Hunter stated that Bruce Douglas, Branch Chief, Environment and Development Review Branch, was present to answer questions regarding staff's environmental assessment of the proposal.

Keith Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubely, presented the applicant's request as outlined in the statement of justification submitted with the application. He said the application was tough and that staff's concerns about the environmental integrity of the property were valid. Mr. Martin said as the agent for the applicant he was contractually committed to the owners of the property to pursue the variance diligently. Mr. Martin said there could not be an RPA delineation reviewed by DEM with the subdivision plan until the BZA approved the variance. He submitted Revised Development Conditions and without the changes, the 200-foot setback requirement would be almost no benefit to the development of the subject property. Mr. Martin said approval from the Burgundy Citizens Association was only for the issue of the 200-foot setback.

The Board members and the applicant's agent discussed what the Chesapeake Bay Ordinance provisions were going to do with respect to the property. Mr. Martin said if they determine it's a perennial stream it would be devastating.

Mr. Dively asked Mr. Martin if he could give a good reason the BZA should grant a variance in this circumstance. Mr. Martin said he felt the application could satisfy the sum of the standards for granting a variance.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 96-L-002 for the reasons set forth in the Resolution. Mr. McPherson seconded the motion and said the applicant made a good faith effort but failed. He said it was a tough application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-002 by ELMWOOD L.L.C., under Section 18-401 of the Zoning Ordinance to permit construction of dwellings less than 200 feet from the right-of-way of I-95, on property located at 5510 Linnean Street, Tax Map Reference 82-2((1))9; 82-2((3))(D)B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the contract purchaser of the land.
2. The present zoning is R-4.
3. The area of the lot is 13.94 acres.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Mr. Kelly was not present for the vote. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 1996.

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The Board recessed at 10:22 a.m. and reconvened at 10:31 a.m.

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Page 604, May 14, 1996, (Tape 1), Scheduled case of :

9:30 A.M. DANIEL T. HORSEMAN, APPEAL 95-S-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining outdoor storage in excess of 100 sq. ft. in area, that such storage is deemed to be a storage yard and a junk yard, is parking two dump trucks and other construction equipment on the subject property in violation and of Zoning Ordinance provisions. Located at 12612 Harper Dr. on approx. 23,069 sq. ft. of land zoned R-C. Springfield District. Tax Map 66-4 ((4)) 40. (DEF. FROM 12/5/95, 1/30/96, and 3/19/96 FOR NOTICES. DEF. FROM 5/14/96 AT APP.'S REQUEST.)

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated May 6, 1996. He said the appellants were no longer contesting the issue of storage and had removed a considerable amount of storage. Mr. Shoup said the appellant has a nonconforming right to park one dump truck or one piece of construction equipment on the property. He said to have the right to park more than one, the appellant would have to show that they had parked the vehicles there consistently since prior to September 1959. Mr. Shoup said no evidence was submitted showing that they had parked vehicles there before 1970.

James Pinkowski, agent for the appellant, presented the arguments forming the basis for the appeal. He presented affidavits from previous owners who had parked trucks on the property between 1970-1980. Mr. Pinkowski submitted letters in support of the appellant's position from the adjacent property owners. Mr. Pinkowski said the appellant was not contesting the storage issue and would move the remaining storage materials in the next few weeks. Mr. Pinkowski asked that the Board overrule the decision of the Zoning Administrator.

Chairman DiGiulian called for speakers.

Ron Stevenson, 5925 Polton Drive, spoke in support of the Zoning Administrator's position. He expressed a concern about storage materials affecting the resale value of his property.

Mr. Pinkowski addressed the speaker's concern in his rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. Dively said the facts show that there was no disagreement between the appellant and the Zoning Administrator. He said there was no reason to disagree with the Zoning Administrator's decision and moved to uphold the decision regarding Appeal 95-S-055, noting concurrence with the determination set forth in the May 6, 1996, memorandum from Mr. Shoup that the appellant had a non conforming right to park either one (1) dump truck or one (1) piece of construction equipment on the property.

Mr. Hammack said the argument the Zoning Administrator gave in the staff report was persuasive and he seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 604, May 14, 1996, (Tape 1), Scheduled case of :

9:30 A.M. MITCHELL FAMILY TRUST, Appeal 96-M-004 Appl. under Sect. 18-301 of the Zoning Ordinance. Determination that appellant has not complied with the proffered conditions associated with Rezoning Application RZ 94-M-039, is operating an office use without site plan and Non-RUP approval, and has erected signs without approval of sign permits, all in violation of the applicable provisions of the Zoning Ordinance. Located at 3401 Charles St. on approx. 10,106 sq. ft. of land zoned C-2, HC and SC. Mason District. Tax Map 61-2 ((18)) 1. (DEF. FROM 4/23/96 AT APP.'S REQUEST.)

Chairman DiGiulian noted the letter received from Mr. Hansbarger requesting a withdrawal of the appeal. Mr. Dively moved that Board accept the withdrawal. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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9:30 A.M. SYED ASLAM ALI, Appeal 96-L-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has established a quick service food store and expanded the existing service station use without special exception approval and is maintaining outdoor storage in conjunction with the service station use in violation of Zoning Ordinance provisions. Located at 6117 Franconia Rd. on approx. 20,823 sq. ft. of land zoned C-5. Lee District. Tax Map 81-3 ((5)) 1A. (DEF. FROM 3/26/96 AT APPLICANT'S REQUEST.)(DEF. FROM 4/23/96 AT APP.'S REQUEST.)

William Shoup, Deputy Zoning Administrator, said the case was deferred several times to give the appellant time to perfect a special exception application which could resolve most of the issues. Mr. Shoup said it was his understanding that the appellant would request a deferral. He said an adjoining business owner expressed concerns about an outdoor lift and soda machines. The appellant then said that they would move the soda machines and the lift. Mr. Shoup said the May 6, 1996, memorandum stated that the appellant did not move those items. He said inspection on May 13, 1996, showed that the appellant had moved the soda machines and had removed the outdoor lift. Mr. Shoup said although the appellant appeared to have attempted to address some concerns, staff was concerned about further deferring the appeal. He stated that the special exception application would not go to public hearing until sometime in November. Mr. Shoup said the adjoining business owner still had concerns. He said staff was having trouble endorsing another deferral.

Thomas Williams, agent for the appellant, said they had resolved the issues raised by the adjoining property owners. He said the appellant had moved the soda machines and they had removed the outdoor lift. He said the appellant made a good faith effort to satisfy the neighbors' complaints and would be willing to work with the neighbors if any other complaints had not been addressed. Mr. Williams asked if the BZA could defer the appeal until the Board of Supervisors heard the special exception application.

Chairman DiGiulian asked if anyone wanted to speak to the deferral.

Patrick Merkel, agent for adjoining property, came forward to support the Zoning Administrator's position.

Theautres Kea, 7350 Springleigh Way, and Jim Stew, 2483 Winbake Drive, spoke in support of the appellant's position.

The Board members and Mr. Shoup discussed the issues included in the violation and the issues included in the special exception application.

Mr. McPherson said if an applicant files the appropriate application generally the Board accommodates a deferral. He moved to defer A 96-L-002 to December 10, 1996 at 9:30 a.m.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 605, May 14, 1996, (Tape 2), Action Item:

Request for Reconsideration
Marita Willoughby, SP 96-S-003

Mr. Hammack moved to deny the Request for Reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 606, May 14, 1996, (Tape 2), Action Item:

Approval of May 7, 1996, Resolutions

Mr. Pammel moved to approve the May 7, 1996 Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 606, May 14, 1996, (Tape 2), Action Item:

Approval of Minutes

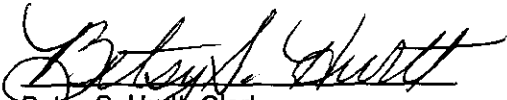
Mr. Pammel moved to approve the April 2, 1996 and April 16, 1996 Minutes. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

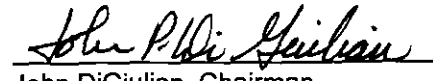
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As there was no other business to come before the Board, the meeting was adjourned at 11:06 a.m.

Minutes by: Regina Thorn

Approved on: June 25, 1996


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 21, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:08 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 607, May 21, 1996, (Tape 1), Scheduled case of:

8:00 P.M. HABITAT FOR HUMANITY, VC 96-V-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line. Located at 2612 Memorial St. on approx. 11,629 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18)) (L) 472, 473 and 474. (OUT OF TURN HEARING GRANTED).

8:00 P.M. HABITAT FOR HUMANITY, VC 96-V-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8.6 ft. from street line of a corner lot and 14.0 ft. from other street line of a corner lot. Located at 2600 Memorial St. on approx. 11,438 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18)) (L) 477 and 478. (OUT OF TURN HEARING GRANTED).

8:00 P.M. HABITAT FOR HUMANITY, VC 96-V-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from side lot line and 17.0 ft. from front lot line. Located at 2608 Memorial St. on approx. 7,915 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18)) (L) 475 and 476. (OUT OF TURN HEARING GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kimberlee Rhodes Cornett, Executive Director, 4451 1st Place South, Arlington, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and said the applicant was proposing to construct three dwelling units under three separate variance application. In variance application VC 96-V-041, the applicant was requesting a variance of 5 feet to the minimum front yard requirement in order to construct a porch addition on the front of the proposed dwelling. Ms. Stagg noted that the dwelling was under construction in the form of grading for the lot by right without the porch addition.

In variance request VC 96-V-042, the applicant was requesting variances of 21.4 feet and 16.0 from the front lot line in order to construct a dwelling 8.6 feet from one lot line and 14.0 feet from the other front lot line.

In variance request VC 96-V-043, the applicant was requesting a variance of 2 feet to the minimum side yard requirement to allow a dwelling to be located 10.0 feet from the side lot line. A 13 foot variance to the minimum front yard requirement was also requested to allow the dwelling to be located 17 feet from the front lot line. She called the BZA's attention to pages 2 and 3 of the staff report which outlined the history of property. Ms. Stagg said staff had visited the site and could verify that the topography is extremely steep and falls sharply from the road down towards the stream. She added that Mary Baldwin Street is shown on the tax map as being a very wide street; however, the pavement is a normal street width and trees exist adjacent to the subject property.

A discussion took place between Mr. Hammack and staff with regard to the front setbacks for other dwellings on the street.

Ms. Cornett thanked the BZA for granting the applicant an out of turn hearing. She explained that Habitat plans to build three single family dwellings which would be compatible with the neighborhood. Ms. Cornett said the houses have been moved away from the floodplain and noted the steep grade on the rear of the lots.

Jim Reid, 2611 Memorial Street, Alexandria, Virginia, said although he approves of what the applicant does he did not believe it was appropriate that three houses be constructed. He said it had been his understanding that only one house would be constructed.

Myles Himes said he would appreciate someone explaining to him just what Habitat Humanity does and what the project entailed.

Chairman DiGiulian asked if the applicant could respond to the speaker's request.

Ms. Cornett explained that Habitat Humanity of Northern Virginia is a home ownership program for low to moderate income families. She said the families invest 500 hours of sweat equity into the construction of their home which Habitat finances with a 20 year zero percent mortgage. Ms. Cornett said this makes home ownership affordable to families who otherwise are shut out of the home ownership market. She said what was important to recognize is that all of the families are tax paying citizens and have a serious investment in their homes. Ms. Cornet said Habitat has a demonstrated record in Fairfax County of building homes which are of complimentary style to the surrounding neighbors. She said Habitat has built 50,000 homes worldwide and these homes are sometimes passed down through the generations.

Mr. Hammack and staff discussed how many lots the other dwellings in the neighborhood were built upon and if the character of the neighborhood would be changed if the variances were granted. Ms. Stagg said there are other houses in the neighborhood built on consolidated lots and in her opinion the houses would fit into the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 96-V-041 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 14, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-041 by HABITAT FOR HUMANITY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 25.0 feet from front lot line, on property located at 2612 Memorial Street, Tax Map Reference 93-1((18))(L)472, 473, and 474, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,629 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for a variance; in particular, the exceptional topographic conditions with the property sloping steeply to the rear of the lot down to the floodplain.
5. In this particular application, the staff report stated that approximately 50 percent of the lot is covered by floodplain and creates a condition that would not allow reasonable use of the property if the variance was not granted.

6. Based on the photographs presented by staff and the applicant's testimony, the construction of the building will not change the character of the neighborhood.
7. In the past, variances were denied but after the floodplain was identified and defined, a previous Board of Zoning Appeals granted similar variances and those conclusions were justified.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by RC Fields, Jr. & Associates, dated January 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval*unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

Page 610, May 21, 1996, (Tape 1), HABITAT FOR HUMANITY, VC 96-V-041, VC 96-V-042, and VC 96-V-043, continued from Page 609)

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack made a motion to grant VC 96-V-042 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 14, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-042 by HABITAT FOR HUMANITY, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 8.6 feet from front lot line of a corner lot and 14.0 feet from other front lot line of a corner lot, on property located at 2600 Memorial Street, Tax Map Reference 93-1((18))(L)477 and 478, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,438 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for a variance; in particular, the exceptional topographic conditions with the property sloping steeply to the rear of the lot down to the floodplain.
5. In this particular application, the floodplain is slightly different but it is still a significant part of the application and runs through roughly the middle section of the property which constrains where buildings can be place.
6. Based on the photographs presented by staff and the applicant's testimony, the construction of the building will not change the character of the neighborhood.
7. In the past, variances were denied but after the floodplain was identified and defined, a previous Board of Zoning Appeals granted similar variances and those conclusions were justified

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;

Page 611, May 21, 1996, (Tape 1), HABITAT FOR HUMANITY, VC 96-V-041, VC 96-V-042, and VC 96-V-043, continued from Page 610

- D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling shown on the plat prepared by RC Fields, Jr. & Associates, dated January 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack made a motion to grant VC 96-V-043 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 14, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-043 by HABITAT FOR HUMANITY, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 feet from side lot line and 17.0 feet from front lot line, on property located at 2608 Memorial Street, Tax Map Reference 93-1((18))(L)475 and 476, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 7,915 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for a variance; in particular, the exceptional topographic conditions with the property sloping steeply to the rear of the lot down to the floodplain.
5. In this particular application, the floodplain is approximately 60 percent of the property which is even a greater constraint.
6. Based on the photographs presented by staff and the applicant's testimony, the construction of the building will not change the character of the neighborhood.
7. In the past, variances were denied but after the floodplain was identified and defined, a previous Board of Zoning Appeals granted similar variances and those conclusions were justified.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.

Page 413, May 21, 1996, (Tape 1), HABITAT FOR HUMANITY, VC 96-V-041, VC 96-V-042, and VC 96-V-043, continued from Page 412

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling shown on the plat prepared by RC Fields, Jr. & Associates, dated January 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble and Mr. Kelley seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 413, May 21, 1996 (Tape 1), Scheduled case of:

8:00 P.M. DIANE E. STRAKER, VC 96-H-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 11267 Center Harbor Rd. on approx. 27,545 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((10)) (2) 12A. (OUT OF TURN HEARING GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diane E. Straker, 11267 Center Harbor Road, Reston, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and said the subject property is a through lot with frontage on Center Harbor Road to the west and Jordan Road to the east. Jordan Road is a substandard street which appears to be a prescriptive easement which provides access from Leesburg Pike to lots north of the subject property. Ms. Stagg said the applicant was requesting variance approval in order to construct a garden house in the front yard.

A discussion took place between the BZA and staff regarding which lots were served by Jordan Road. Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out the lots on the view graph. Ms. Kelsey said although Jordan Road does not appear to be a public street it constitutes a street as defined in the Zoning Ordinance for purposes of requiring front yards instead of rear yards.

Ms. Straker thanked the BZA for granting her an out of turn hearing. She explained that Jordan Road is essentially a 16 and a half foot easement right of way with trees growing on it and the development of the surrounding lots have negated the need for the road now or in the future. She added all the lots fronting on Jordan Road are back yards as far as the property owners are concerned. Ms. Straker said the plans for the garden house have been approved by the Reston Design Review Board and the materials used in the construction will match those on the existing dwelling. The garden house will be located 57.3 feet from the Jordan Road and with the additional width of Jordan Road and the setback of the abutting house the garden house will be approximately 90 to 95 feet from that house. She said the location was chosen in an effort to save trees and noted that all setback requirements have been met.

Augustine Douoguih, 11263 Center Harbor Road, Reston, Virginia, supported the request and said all of the houses front on Center Harbor Road and that he did not believe the request will adversely impact the neighborhood.

In response to an earlier question, Ms. Kelsey said staff normally did not make site visits on yard variance applications and that it is clear from the photographs that Jordan Road is heavily wooded.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 96-H-046 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 14, 1996. Mr. Hammack seconded the motion which carried by a vote of 7-0. Ms. Straker asked the BZA to waive the eight day waiting period and Mr. Pammel made a motion to do so.

Mr. Pammel said if the height of the garden house is 16 feet the plat needed to be revised since a setback of 11.3 feet was shown on the plat. Ms. Kelsey said staff would have to research the issue.

Mr. Pammel withdrew his motion to waive the eight day waiting period and asked staff for a response at its next meeting.

(NOTE: This resolution was approved at the BZA's meeting on May 28, 1996, with no changes.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-046 by DIANE E. STRAKER, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 square feet, on property located at 11267 Center Harbor Road, Tax Map Reference 12-3((10))(2) 12A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 27,545 square feet.
4. There are approximately thirty lots in the surrounding subdivisions or developments with the same problem. It would be unfortunate if an individual in a similar circumstance who wants to do the same thing would have to pay a fee to come to the County on a rather absurd type of situation to get a variance by going through the public hearing process. There should be some way that staff

can administratively dispose of applications. Staff should explore the situation and amend the Zoning Ordinance in order to correct the situation.

5. The applicant has presented testimony that she does comply with the nine prescribed Standards set forth in the Zoning Ordinance to qualify for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an accessory structure shown on the plat prepared by Stephen T. Palmer, dated March 19, 1996 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The accessory structure (garden house) shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

Page 416, May 21, 1996 (Tape 1), DIANE E. STRAKER, VC 96-H-046, continued from Page 415)

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 416, May 21, 1996 (Tape 1), Scheduled case of:

8:00 P.M. CAPELLI HAIR, SKIN & NAILS, SP 96-M-010 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a massage parlor. Located at 6112 Arlington Blvd. on approx. 10.62 ac. of land zoned C-7 and SC. Mason District. Tax Map 51-4 ((1)) 2B. (OUT OF TURN HEARING ORDER. GRANTED).

Chairman DiGiulian said it appeared that the notices were not in order in this case. Jane Kelsey, Chief, Special Permit and Variance Branch, said the Clerk had talked with the applicant on several occasions regarding the notices. She suggested deferring the application to June 25, 1996, to allow the applicant an opportunity to meet the notice requirement.

Chairman DiGiulian said the BZA had granted the applicant an out of turn hearing and asked why the notices had not been done. Ms. Kelsey deferred to the Clerk, Betsy Hurtt. Ms. Hurtt said the applicant had not understood the process and had only notified the tenants in the shopping center. When the applicant submitted the incorrect notices to the Clerk, the process was explained to her and she indicated that she now understood the process. Mr. McPherson so moved and hearing no objection, the Chair so ordered.

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Page 416, May 21, 1996, (Tape 1), Information Item:

Clarification and Possible Reconsideration of Deferral Date for
SPA 85-C-049-3, The Enterprise School

The BZA was in receipt of a memorandum from Susan Langdon, Senior Staff Coordinator, providing further information concerning the advertising of this case.

Jane Kelsey, Chief, Special Permit and Variance Branch, said at its May 14, 1996, the BZA had advised the applicant that if she chose to change the hours of operation, the application would need to be amended. Staff had been unaware that this was the applicant's intent. Upon reviewing the legal ad, staff determined that the wording was broad enough to allow this change without readvertising but did inform the applicant that the application had to be amended. Ms. Kelsey suggested deferring the application to June 4, 1996, at 9:00 a.m.

Following a discussion among the BZA members, Mr. Pammel said that he noted the change in hours of operation while reading the staff report and staff should have picked up on that fact when reviewing the application.

Chairman DiGiulian said he believed the application had been properly advertised.

Mr. Ribble made a motion to defer the application for the date and time suggested by staff. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 417, May 21, 1996 (Tape 1), Information Item:

Approval of May 14, 1996, Resolutions

Mr. Hammack made a motion to approve the Resolution as submitted. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 417, May 21, 1996 (Tape 1), Information Item:

Out of Turn Hearing Request for VC 96-S-062
ALI, FARIDA, SUSAN B., RIZWAN, AND ADNAN MAHBOOB

Mr. Dively asked staff for a possible out of turn hearing date. Jane Kelsey, Chief, Special Permit and Variance, noted the number of cases presently scheduled for the meetings in July. Mr. Dively made a motion to schedule the application for July 9, 1996, since it appeared that one of the cases currently scheduled for that day might be deferred. Hearing no objection, the Chair so ordered.

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Page 417, May 21, 1996 (Tape 1), Information Item:

Out of Turn Hearing Request for SP 96-L-013
Engleside Baptist Church

Mr. Dively made a motion to grant the applicant's request for an out of turn hearing and schedule the application for July 16, 1996. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 417, May 21, 1996 (Tape 1), Information Item:

Emergency Out of Turn Hearing request
(Dwelling burned)

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant's house had been damaged in a fire and was requesting a variance in order to construct a new one. Mr. Kelley asked if the new house would be built in the same footprint. Ms. Kelsey said it was her understanding that it would but the variance was required to replace the carport which had been enclosed on the sides without approval. She said she had received a telephone call with regard to the application, but that she had not yet seen the application. Mr. Hammack said he did not feel comfortable granting an out of turn hearing for an application that had not yet been received by staff. Ms. Kelsey explained that the application had been accepted by the Application Acceptance Branch; however, it had not yet been into the system thus her Branch did not yet have the application. The BZA asked staff to schedule the case for the earliest possible date due to the unusual circumstances and Ms. Kelsey agreed to do so.

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Page 417, May 21, 1996 (Tape 1), Information Item:

DOMESTIC BUILDING PARTNERSHIP/KYUNG KIM, VC 94-M-073

Chairman DiGiulian called the BZA's attention to a memorandum from the Staff Coordinator, David Hunter, with regard to Condition Number 5 in VC 94-M-073. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the change was only for clarification. Mr. McPherson asked if the change had been discussed with the applicant. Ms. Kelsey said she was uncertain. Chairman DiGiulian said the applicant should have been made aware of the change. Ms. Kelsey agreed to do so if Mr. Hunter had not already done so. Following further discussion between the BZA and staff, the BZA asked that the Condition be approved without the suggested changes.

Page 418, May 21, 1996 (Tape 1), Information Item:

Memorandum Regarding August Meetings from
James P. Zook, Director, Office of Comprehensive Planning dated May 21, 1996

Following a discussion among the BZA members, it was decided to table the item until each member had an opportunity to read the memorandum.

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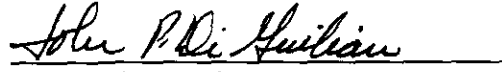
As there was no other business to come before the Board, the meeting was adjourned at 9:03 p.m.

Minutes by: Betsy S. Hurtt

Approved on: July 9, 1996



Betsy S. Hurtt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 28, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; James Pammel; and John Ribble. Mr. Kelley was absent.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 619, May 28, 1996, (Tape 1), Scheduled case of:

9:00 A.M. MILDRED T. MILLER, VC 96-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot lines, deck 7.0 ft., chimney 5.0 ft. and roofed deck 7.0 ft. from side lot line. Located at 2306 Arden St. on approx. 11,033 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 55.

MILDRED T. MILLER, VC 96-P-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot line and 20.0 ft. from rear lot line, deck 7.0 ft. and chimney 5.0 ft. from side lot line and roofed deck 20.0 ft. from rear lot line. Located at 2302 and 2304 Arden St. on approx. 16,084 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 57 and 58A.

MILDRED T. MILLER, VC 96-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot lines, deck 7.0 ft., chimney 5.0 ft. and roofed deck 7.0 ft. from side lot line. Located at 2308 Arden St. on approx. 11,044 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 56.

Chairman DiGiulian stated that there was a request from the Planning Commission to defer these cases so they could administratively review the cases on June 12, 1996.

Chairman DiGiulian called for speakers to the deferral request.

The applicant's agent, Paul Jeanin, Land Design Consultants, said there was a rezoning request under consideration by the Planning Commission for a lot similar in size, in setbacks and located in the same district as the above variance requests. Mr. Jeanin said that Carl Coan, Planning Commissioner, was concerned over staff's recommendation for denial of the rezoning request in the general area; therefore, Mr. Coan wanted to review the variance request, also. Mr. Jeanin felt that the two requests were very different. He said the variance request before the BZA was for existing lots of record which were created in 1940, prior to the Zoning Ordinance. Mr. Jeanin said the applicant's lots were not in consideration for rezoning but instead for a variance and he felt they were compatible to the adjacent Chatham Square Community lots. Mr. Jeanin said a deferral would be a hardship for the applicant because she was counting on the sale of the lots for retirement income.

At the Board's request, staff suggested a hearing date of June 25, 1996.

Mr. Ribble moved to defer this hearing until June 25, 1996. He stated it had been the BZA's policy in the past that when they get a request from the Board of Supervisors, Planning Commission, or an applicant they try to comply with the request.

Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 619, May 28, 1996, (Tape 1), Scheduled case of:

Memo from David Hunter, Staff Coordinator
pertaining to VC 96-H-046, Diane Straker

The Board discussed the memorandum regarding VC 96-H-046, Diane Straker, with Susan Landon, Senior Staff Coordinator. The memorandum addressed their previous questions from the May 21, 1996 hearing involving this case, prior to approval of the resolution.

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Page 620, May 28, 1996, (Tape 1), Scheduled case of:

Approval of Resolutions
from May 21, 1996 hearing

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 620, May 28, 1996, (Tape 1), Scheduled case of:

Out of Turn Hearing Request
for SPA 91-V-071-2, Plymouth Haven Baptist Church

Mr. Hammack moved to grant the request for an out of turn hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new hearing date is July 16, 1996.

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Page 620, May 28, 1996, (Tape 1), Scheduled case of:

Out of Turn Hearing Request
for SPA 72-P-020, Woodley Recreation Association, Inc.

Mr. Hammack moved to grant the request for an out of turn hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new hearing date is July 16, 1996.

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Page 620, May 28, 1996, (Tape 1), Scheduled case of:

Out of Turn Hearing Request
for SPA 81-C-093-3, Fox Mill Woods Swim and Tennis Club, Inc.

Mr. Hammack moved to deny the request for an out of turn hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 620, May 28, 1996, (Tape 1), Scheduled case of:

Request for Intent to Defer
for Appeal 96-M-010, Virginia Psychiatric Co., DBA Dominion Hospital

William Shoup, Deputy Zoning Administrator, requested that this item be moved to the end of the agenda since the appellant's agent, Mr. Hobson, and other citizens who wanted to speak to the deferral request were not present. Chairman DiGiulian concurred.

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The Board recessed at 9:30 a.m. and reconvened at 9:34 a.m.

9:30 A.M. VIRGINIA KOREAN BAPTIST CHURCH, SPA 80-S-043-2 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 80-S-043 for church and related facilities to permit building addition and site modifications. Located at 7200 Ox Rd. on approx. 15.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 1A and 1L.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William Robson, Robson Group Architects, Inc., replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report dated May 21, 1996. The applicant requested a special permit for approval of a two-story building addition for use as a social hall/gymnasium and Sunday school rooms. Ms. Stagg noted that the applicant's last special permit request was approved by the BZA but contained an applicant error regarding the building addition square footage and location of an existing drain field; therefore, a special permit amendment was necessary.

Mr. Robson presented the applicant's request as outlined in the statement of justification submitted with the application. He also requested that the Board change Development Condition #10, which called for a 135 foot dedication from the centerline of Ox Road. Mr. Robson said that all the adjacent land owners had dedicated 90 feet to the road widening project and he felt it would be more appropriate for the applicant to be expected to dedicate the same. A letter from Supervisor McConnell was submitted indicating that she agreed with the applicant on this issue.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SPA 80-S-043-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 21, 1996, with the requested change to Development Condition #10.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 80-S-043-2 by VIRGINIA KOREAN BAPTIST CHURCH, under Section 3-C03 of the Zoning Ordinance to amend SP 80-S-043 for church and related facilities to permit building addition and site modifications, on property located at 7200 Ox Road, Tax Map Reference 87-4 ((1)) 1A and 1L, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 15.0 acres.
4. There is not much difference between the current special permit application and the one previously approved by the BZA.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-C03 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, 7200 Ox Road (15 acres), and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Joseph McClellan for William H. Gordon Associates, Inc., dated February 1996, and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The maximum number of seats in the sanctuary shall not exceed 400. However, at any given time, the number of seats in the sanctuary shall not exceed four (4) times the number of parking spaces available on site, up to the maximum of 400 seats.
6. There shall be 157 parking spaces provided as shown on the special permit plat. All parking shall be on site. The parking area shall be reviewed by DEM during site plan review for compliance with the Public Facilities Manual standards. Illumination of the parking lot, if it is desired, shall be approved by DEM, as qualified by Proposed Development Condition Number 13.*
7. Transitional Screening 1 shall be modified along the southeastern and northern property lines as shown on the special permit plat. The existing trees located between the northern property line and the existing playground shall remain. Existing vegetation shall satisfy the transitional screening requirement along the western property line.*

Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch, DEM.* There shall be no clearing of any vegetation within the limits of clearing and grading, except for dead or dying trees and shrubs. There shall be no structures located within the limits of clearing and grading, with the exception of improvements determined necessary by DEM for the storm water detention area. Minor alterations shall be permitted to accommodate engineering or other code required changes deemed necessary by DEM or the Urban Forester.

Interior parking lot landscaping and building foundation plantings shall be provided to the satisfaction of the Urban Forestry Branch, DEM.*

The barrier requirement shall be waived along all lot lines.*

8. Stormwater Best Management Practices (BMPs) shall be provided on site as shown on the special permit plat to the satisfaction of the Department of Environmental Management (DEM) in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.*
9. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be substantially in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated

with the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DEM, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM.*

- 10. Right-of-Way to 90 feet from the centerline of Ox Road necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan review, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

The existing deceleration lane shall be maintained on OX Road.*

Interparcel access shall be provided to Lot 7F to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County at the time of site plan review.*

- 11. The applicant shall provide an off-duty police officer to be stationed at the entrance of the site on Sunday mornings between 9:00 a.m. and 12:00 noon to facilitate left-turns into and from the site.*
- 12. Signs shall be permitted in accordance with Article 12, signs.*
- 13. The combined height of the light standards and fixtures shall not exceed twelve (12) feet. The lights shall be a design which focuses the light directly onto the subject property. Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.*

* Denotes previously approved conditions.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 623, May 28, 1996, (Tape 1), Scheduled case of:

9:30 A.M. CHOE & PARK CORPORATION, SP 96-M-006 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit commercial recreation use (Karaoke). Located at 7031 Little River Tnpk. on approx. 3.31 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1 ((1)) 116A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Brian Im, Im and Associates, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated May 21, 1996. The applicant requested a special permit to allow a commercial indoor recreation use, Karaoke studio, within an existing structure.

Mr. Im presented the applicant's request as outlined in the statement of justification submitted with the application.

In response to Mr. Hammack's questions, Mr. Im said there would be one full-time employee and a few part-time employees on the site during business hours and there would be no other commercial use associated with this special permit request. He briefly explained how the business would operate.

Mr. Hammack discussed with staff how they had evaluated the number of parking spaces needed by the applicant.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to grant SP 96-M-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 21, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-M-006 by CHOE AND PARK CORPORATION, under Section 4-603 of the Zoning Ordinance to permit commercial recreation use (Karaoke), on property located at 7031 Little River Turnpike, Tax Map Reference 71-1 ((1)) 116A, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is C-6, HC and SC.
3. The area of the lot is 3.31 acres.
4. The applicant met the required standards for a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 4-603 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, 7031 Little River Turnpike, Suite 14-C (1,860 square feet) and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this indoor commercial recreation use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit plat prepared by Robert Sproles for Huntley, Nyce & Associates, Ltd., dated August 2, 1995 and revised through October 14, 1995, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation shall be limited to 4 p.m. until 2 a.m., daily.
5. There shall be a maximum of one (1) employee at any one time associated with this use.
6. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be determined by the Director, Department of Environmental Management.
7. Signs shall be permitted in accordance with Article 12, Signs.
8. The existing vegetation shall be preserved and maintained as indicated on the approved Special Permit plat and shall satisfy the Transitional Screening requirement. The eight (8) foot high masonry wall shown on the approved Special Permit plat along the southern and eastern lot lines shall satisfy the Barrier requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 1996. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. STANIS FURNITURE, INC., APPEAL 93-P-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant's retail sales operation occupies more than forty (40) percent of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 and Par. 1 of Sect. 2-305 of the Zoning Ordinance. Located at 2809 Merrilee Dr. on approx. 42,350 sq. ft. of land zoned I-5. Providence District. Tax Map 49-1 ((20)) 29.

Chairman DiGiulian disclosed that Stanis Furniture and the owners of the property, McCue and McCue Limited Partnership, had been clients of his in the past; therefore, he would not participate in the hearing.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated May 21, 1996. Mr. Shoup noted that the Zoning Ordinance had been amended to provide the opportunity for special exception approval to allow 60 percent retail and related office use with the remaining to be warehouse. He said it appeared, with some minor modification, that the appellant's use could be accommodated that way. In June of 1995, the appellant was notified of that option but did not pursue it. Mr. Shoup added that recently, the appellant had indicated an intent to pursue special exception approval but to date nothing had been filed.

The appellant's agent, Ken Sanders, presented the arguments forming the basis for the appeal. He said the Zoning Ordinance stated that in an I-5 District you can have retail sales associated with warehouse as long as it was based on a 60/40 warehouse to retail split. He said the reason the furniture stores are located in the I-5 Districts was because of the low intensity of their use. Mr. Sanders said most of the appellant's business was done on weekends with little impact on traffic and had low parking requirements.

Mr. Sanders said that when the appellant made improvements to its business the County's definition of gross floor area was, "...each 10 feet of height or fraction thereof as being equal to one floor..."; therefore, the appellant concluded that since the Stanis Furniture building had 18 feet of wall, it would count as two floors. Mr. Sanders said the appellant's gross floor area was much more than what the County calculates it to be today. Mr. Sanders showed the BZA a site plan that was submitted in 1989 which he felt indicated that the gross floor area was calculated as being 57,000 square feet by the County instead of the 41,000 they are using today. He said that the Zoning Ordinance was amended at some point to drop out the 10 foot reference.

Mr. Hammack asked Mr. Sanders if the parking that Stanis' provided complied with the gross floor calculations that the appellants used. Mr. Sanders said he did not know exactly which calculations the parking complied with. He noted that they had looked into rezoning the property into commercial retail because Home Depot, located adjacent to them, was rezoned to C-8. He said they had ample parking to cover a commercial retail use which has a higher requirement than what they were currently under.

Mr. McPherson questioned the DEM Permit, dated November 12, 1980, which indicated the area of the building as 83,000 square feet as shown in the staff report. He discussed with Mr. Shoup how that area could have been calculated by DEM.

In rebuttal, Mr. Shoup said that the old Zoning Ordinance definition was not represented on the 1989 site plan that Mr. Sanders had submitted. He said there were certain representations made on the square footage and noted in the tabulation area there was 14,581 square feet of retail space and 24,990 of warehouse space indicated. Mr. Shoup said the County approved that tabulation and that was how the establishment was to be built and operated. He felt the appellant was trying to take advantage of the gross floor area definition out of context. Mr. Shoup said the use limitation stated that you have to start with 60 percent of the area devoted to warehouse and then you can have associated retail sales. He said based on the calculations set forth in the staff report, the appellant was not doing that.

Mr. Dively discussed with Mr. Sanders whether the appellant was going to move forward to rezone or seek special exception approval. Mr. Sanders said that no decisions had been made yet in reference to seeking special exception approval because it could be costly and time consuming. He said they were awaiting the outcome of today's appeal before making a decision.

Vice Chairman Ribble closed the public hearing.

Mr. Dively made a motion to reverse the Zoning Administrator for the following reasons. He said that he agreed with the appellant's interpretation of calculating the gross floor area and did not want to punish the business. Mr. Dively felt Mr. Sanders interpretation was sensible, accurate, and comports with the usage of the building. Mr. McPherson seconded the motion.

Page 627, May 28, 1996, (Tape 1), STANIS FURNITURE, INC., APPEAL 93-P-014, continued from Page 626

Vice Chairman Ribble called for a discussion.

Mr. Pammel stated that he could not support the motion. He felt that when the permit was issued, the Certificate of Occupancy of 1982 clearly indicated that there was a 60/40 warehouse to retail split. He said the appellants had complied with the current provisions of the Zoning Ordinance and it appeared that over the next 14 years the retail space had expanded into what was originally the warehouse space. Mr. Pammel said the Board of Supervisors had addressed the issue and adopted amendments to the Zoning Ordinance last year which clarified under which conditions retail could exceed the 40 percent. He felt the BZA had to comply with the letter of the Zoning Ordinance.

Mr. Hammack agreed with Mr. Pammel's comments. Mr. Hammack also noted that the permits were issued based upon the 41,650 square feet of use and there was even a calculation shown. He said Mr. Sanders' argument may have applied in some situations however, in looking at the site plan and what was originally approved, Mr. Hammack felt the County had indicated it was for the smaller space and the appellant never challenged it at the time. Mr. Hammack stated he was opposed to the motion.

The vote was 3-2-1, with Mr. Dively, Mr. McPherson and Mr. Ribble voting for the motion; Mr. Pammel and Mr. Hammack voted nay. Chairman DiGiulian abstained from the vote. Mr. Kelley was absent from the meeting. The motion failed for the lack of four affirmative votes which are required to overturn a determination made by the Zoning Administrator.

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Page 627, May 28, 1996 (Tape 1), Scheduled case of:

9:30 A.M. RICHARD DANIEL PELL, APPEAL 96-P-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that existing establishment is a non-conforming use which may not be expanded into the rear portion of the structure. Located at 8815 Lee Hwy. on approx. 3.33 ac. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((1)) 4. (MOVED FROM 4/30/96 AT APPL'S. REQ.)

William Shoup, Deputy Zoning Administrator, said the notices were not in order for this case and they were recommending a deferral date of July 30, 1996.

Mr. Hammack discussed with Mr. Shoup why the notices were not done. Mr. Shoup said it was because the appellant did not notify all of the adjacent property owners, as required by the Zoning Ordinance, and by the time the appellant submitted the notices to staff, it was after the fifteen day deadline; therefore, it was too late to make the corrections.

Mr. Hammack moved to defer the hearing to July 30, 1996. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 627, May 28, 1996, (Tape 1 & 2), Scheduled case of:

Request for Intent to Defer for
Dominion Hospital, Appeal 96-M-010

The appellant's agent, Richard Hobson, attorney for McGuire, Woods, Battle & Boothe, gave the Board a brief background in reference to the special exception that was originally approved by the Board of Supervisors. He said the special exception approval contained a provision that said violent patients were prohibited; however, certain patients under the age of 17, who were committed by the court, could be accepted. In 1994, the hospital tried to amend the special exception to allow them to also accept adult patients from the court. That amendment was opposed by the neighborhood and was ultimately withdrawn prior to being heard by the Board of Supervisors. However, the concern raised over possible threats to the neighborhood if violent

patients were to escape continued. Mr. Hobson said the neighbors went to Supervisor Trapnell and the Zoning Administrator, who had issued a determination.

Mr. Hobson stated that he had filed an appeal with the Board of Zoning Appeals and also filed an application with the Board of Supervisors putting forth an amended definition of violent patients and other provisions. He said he wanted time to have discussions with the various neighborhoods to address their concerns and work out conditions to reassure them regarding their safety. Mr. Hobson stated that the special exception application had been filed, but not given a hearing date. He said he was requesting a deferral because the special exception would not be heard prior to the BZA's June 18, 1996 hearing.

In response to Mr. Hammack's question, Mr. Hobson said the hospital was admitting patients based on the Zoning Administrator's interpretation.

Mr. Hammack stated that they had three letters in opposition to the deferral.

William Shoup, Deputy Zoning Administrator, stated that this condition and interpretation goes to the issue of whether or not the appellant was admitting violent patients who may pose a threat to the surrounding area. Mr. Shoup said the special exception application would not be heard until November by the Board of Supervisors; therefore, staff could not support the deferral request.

Chairman DiGiulian called for speakers to the deferral.

The following spoke in opposition to the deferral request. Mary Northup, 6429 Icobob Place, Falls Church, Virginia, Elected Chair of Committee Advisory Board for Dominion Hospital; Ann Pendleton, President of Sleepy Hollow Citizens Association, 3028 Knoll Drive, Falls Church, Virginia; Jane Harvey, 3129 Sleepy Hollow Road, Falls Church, Virginia, representing the Raven Hood Citizen Association; and Roger Hosgan, 6211 Cheryl Drive, Falls Church, Virginia, President of Ravenwood Park Civic Association. Their main points dealt with concern over the safety of the neighborhoods and their inability to reach any compromise with the hospital during their negotiations over the last two years. The above speakers, with the exception of Mr. Hosgan, submitted a copy of their remarks which are contained in the Dominion Hospital Appeal file. Mr. Hosgan's remarks referenced concern over the safety of the neighborhood and felt the deferral request was an attempt to frustrate and further delay the due process of this hearing.

In response to questions from the Board, Mr. Shoup said the County's interpretation on admitting violent patients to the hospital would stay in effect and would be enforced.

In rebuttal, Mr. Hobson said the application for a special exception amendment was not the only result that the hospital would be willing to accept. He said the appellant had just started to work with the neighborhood and Zoning Administrator in coming up with conditions they all could be satisfied with and to make them feel safe. Mr. Hobson said they were asking for a deferral in order to let that process continue. He said the appellant was willing to accept a time limit, based on if the Board of Supervisors had not heard the case by a reasonable time frame or if the negotiations with the neighborhoods should fail.

Chairman DiGiulian asked Mr. Hobson if the BZA were to defer this case until the special exception amendment was heard, would the hospital voluntarily comply with the Zoning Administrator's determination. Mr. Hobson said that it was the hospital's opinion that they were complying with both definitions and not admitting violent patients.

In response to questions from the Board, Mr. Shoup said the appellant was appealing two issues, the definition of violent patients and the right of the Zoning Administrator to interpret.

Chairman DiGiulian closed the public hearing and called for a discussion.

Mr. Dively said he felt the BZA should hear the matter and not defer it. He felt the citizens in the neighborhood had the right to know whether or not the Zoning Administrator made an appropriate decision and interpretation regarding this matter.

Page 629 (with 628 written over it), May 28, 1996, (Tape 1 & 2), DOMINION HOSPITAL, Appeal 96-M-010, continued from Page

Mr. Hammack said in many cases, when a special exception had been applied for, it was the practice of the BZA to defer it until it could go before the Board of Supervisors.

Mr. Pammel said he agreed with Mr. Dively's comments. He also felt the hearing should go forward on the currently scheduled hearing date of June 18, 1996.

Mr. Dively made a motion to deny the request for deferral. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 629, May 28, 1996, (Tape 2), Scheduled case of:

Memo from Mr. Zook, Director
Office of Comprehensive Planning

Chairman DiGiulian said he would like to address the memorandum from Mr. Zook, Director, Office of Comprehensive Planning that they received last week regarding the issue of meeting throughout the month of August.

Chairman DiGiulian said the reason they made the motion to meet throughout August was to resist the need to meet more than once a week.

Mr. Pammel agreed with Chairman DiGiulian. He also noted that they were under the constraint of having to hear applications within ninety days.

Mr. Ribble said in the past they had doubled up meetings in the month of July and September in order to hear these cases in time. He felt there would be a continuous flow of once a week meetings if they met all year round and would eliminate the need for double meetings before and after the break. He also noted that he did not feel the month of August was when most of the employees took their vacations.

Mr. Hammack said he felt the citizens had a right to expect the government to be available to act upon their applications when they were filed. He did not feel the government had a right to a one month recess.

Mr. McPherson asked the other members of the Board if there would be a quorum available throughout the month of August. Mr. McPherson stated that he would not be able to attend the meeting the second week of August. After a brief discussion, it was agreed that there would be enough members available for a quorum during August.


Mr. Pammel made a motion for Chairman DiGiulian to refer this matter up to the County Executive and try to get a decision from the top level. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:18 a.m.

Minutes by: Teresa M. Wang

Approved on: August 13, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 4, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mr. Hammack gave the invocation. Mr. Hammack made a motion for the Board members to recess into an Executive Session to discuss scheduling and personnel matters. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. McPherson was absent from the meeting. The Board reconvened at 9:26 a.m. and Chairman DiGiulian called for the first scheduled case.

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Page 631, June 4, 1996, (Tape 1), Scheduled case of :

9:00 A.M. LELAND G. & MARION S. FAY, VC 96-V-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 4403 Granada St. on approx. 15,502 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-1 ((20)) (12) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Leland Fay, 4403 Granada Street, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, made staff's presentation as contained in the staff report dated May 28, 1996. The applicant requested a variance of 4.0 feet to the minimum side yard requirement.

Mr. Fay presented the variance request as outlined in the statement of justification submitted with the application. He presented a signed list of property owners in support of the application. Mr. Fay said the proposed addition would be consistent with the other houses in the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 96-V-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-031 by LELAND G. & MARION S. FAY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.0 feet from side lot line, on property located at 4403 Granada Street, Tax Map Reference 110-1((20))(12)23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 15,502 square feet.
4. The applicant met the nine required standards for a variance.

5. The applicant presented testimony indicating there are converging lot lines towards the front of the lot which almost makes it a pie shaped lot.
6. The house is probably situated on the lot in its present location because of the drainage areas which limits where the construction can take place.
7. Only one corner of the addition needs a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Kenneth W. White, dated February 23, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

Page 633, June 4, 1996, (Tape 1), LELAND G. & MARION S. FAY, VC 96-V-031, continued from Page

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variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 633, June 4, 1996, (Tape 1), Scheduled case of :

9:00 A.M. JOHN F. GEARY, JR., VC 96-D-030 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1217 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 030-1 ((5)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Geary, 1217 Earnestine Street, McLean, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated May 28, 1996. The applicant requested a variance of 5.0 feet to the minimum side yard requirement.

Mr. Geary presented the variance request as outlined in the statement of justification submitted with the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-D-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-030 by JOHN F. GEARY, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line, on property located at 1217 Earnestine Street, Tax Map Reference 30-1((5))14, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,300 square feet.
4. The applicant met the nine required standards for a variance.

5. The north lot line converges towards the rear from the front property line impinging on the rear corner of the proposed addition.
6. The proposed addition does not detrimentally impact the adjoining property owner.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (garage) shown on the plat prepared by Stephen T. Palmer, Land Surveyor, dated March 4, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. EDMUND J. AVERMAN, III, VC 96-M-027 Appl. under Sect(s). 8-401 of the Zoning Ordinance to permit construction of accessory structure 0.0 ft. from side lot line. Located at 6640 Locust Way on approx. 23,000 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((10)) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michele A. Rosati, 4141 N. Henderson Road, Arlington, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated May 28, 1996. She verbally corrected an error made in the staff report. The staff report said the variance request was 12.0 feet to the minimum side yard requirement and it should have been 15.0 feet.

Ms. Rosati, with the law firm of Lawson & Frank P.C., presented the applicant's request as outlined in the statement of justification submitted with the application. She said the proposed addition would not be detrimental to the adjacent property owners. Ms. Rosati submitted sketches of the proposed addition at Mr. Hammack's request. She said the addition would be architecturally compatible with the existing dwelling.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-M-027 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-027 by EDMUND J. AVERMAN, III, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 0.0 feet from side lot line, on property located at 6640 Locust Way, Tax Map Reference 71-2((10))36, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 23,000 square feet.
4. The applicant met the nine required standards for a variance.

5. The request to add an addition to an existing structure for which a variance had already been obtained does not further extend the nonconformity into the side yard.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of an addition of a shed to an accessory structure (a garage) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated January 31, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling and garage.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 637, June 4, 1996, (Tape 1), EDMUND J. AVERMAN, III, VC 96-M-027, continued from Page 626

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 637, June 4, 1996, (Tape 1), Scheduled case of :

9:00 A.M. GENE W. HENDRIX, VC 96-V-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 34.4 ft., 29.4 ft., 32.5 ft. and 40.0 ft. from street line of a corner lot and permit existing dwelling to remain 34.4 ft. from front lot line and accessory structure to remain in front yard. Located at 11374 River Rd. on approx. 29,144 sq. ft. of land zoned R-E. Tax Map 119-4((2))(6)1-10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gene Hendrix, 5901 Mount Vernon Boulevard, Lorton, Virginia, replied that it was.

Jane Kelsey, Branch Chief, made staff's presentation as contained in the staff report prepared by Lori Greenlief dated May 28, 1996. The applicant requested variances of 15.6 feet, 20.6 feet, 17.5 feet, and 10.0 feet to the minimum front yard requirement. Variances of 15.6 feet and 12.5 feet for existing structures to remain in the front yard were also requested. Ms. Kelsey said variances had previously been granted on Lots 1-4.

Mr. Ribble asked staff if a variance had been previously granted on the subject property. Ms. Kelsey replied no.

Mr. Hammack referenced an opposition letter submitted to the Board from the Gunston Manor Homeowners' Association. The letter pertained to the storage of wood on common area near the subject property. Mr. Hammack asked if staff had visited the property. Ms. Kelsey replied that staff does not normally visit properties requesting a yard type variance and that staff had not visited the subject property.

Mr. Hendrix presented the variance requests as outlined in the statement of justification submitted with the application. He responded to comments stated in a letter of opposition submitted to the Board from the Gunston Manor Homeowners' Association. He presented letters in support of the application to the Board and photographs of the subject property.

Mr. Hammack asked Mr. Hendrix whose property was the wood stored on. Mr. Hendrix replied that the wood was stored on the right of way which was County property.

Mr. Dively said storing the wood on County property would be a violation of the Zoning Ordinance. He asked staff if they could treat the opposition letter as a complaint and have an investigation.

Mr. Hammack said he would not object to a deferral to give staff time to investigate the issue. He asked Ms. Kelsey how much time would be needed to investigate the issue. Ms. Kelsey replied that she could not give an exact time because the Zoning Enforcement Branch does the investigation and can issue violations. She stated that the investigation could probably be completed within two weeks.

Mr. Hammack said he had a hard time supporting the application if the applicant was violating the Ordinances of the County. He said the issue needed to be investigated and he moved to defer VC 96-V-026 to June 18, 1996 at 8:00 p.m. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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9:00 A.M. THE ENTERPRISE SCHOOL, SPA 85-C-049-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-049 for private school of general education to permit change in development conditions and continuation of use. Located at 1629 Beulah Rd. on approx. 4.50 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 13. (MOVED FROM 5/21/96. DEF. FROM 5/14/96. MOVED FROM 7/30/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michele E. Surwit, 11909 Winstead Lane, Reston, Virginia, replied that it was.

Chairman DiGiulian said the subject application was before the Board at an earlier public hearing and there was a question on the advertising.

Susan Langdon, Staff Coordinator, said that was correct. She said the advertising language was found to be correct and would cover the proposed changes to the hours of operation and the increase in staff.

The applicant's agent, Michele Surwit, presented the applicant's request as outlined in the statement of justification submitted with the application. She said the applicant would comply with the requirements of the use permit and the bi-annual contract with the Board of Supervisors which assures the community of a safe and responsible operation.

Chairman DiGiulian called for speakers.

Lois Love, 1641 Beulah Road, spoke in opposition. She expressed concern with removing the condition pertaining to the term limit.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SPA 85-C-049-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 28, 1996.

Mr. Pammel said the motion included a term without limit. He said the applicant stated that they would strictly adhere to the conditions as prescribed by the permit. Therefore, it was not reasonable for the Board to review the application again in five years. Mr. Pammel said If there are problems associated with the project, the residents of the community had recourse through the Board and that should be sufficient.

Mr. Hammack seconded the motion for purposes of discussion. He said he was sympathetic to the request that there be a five year term limit because there was evidence that the school had operated outside of its terms. Mr. Hammack said the school had been casual in their attitude regarding the development conditions. He said the citizens do have recourse, but if the school knew it had to be reviewed periodically, they would stay in stricter compliance.

Chairman DiGiulian agreed with Mr. Hammack.

Mr. Hammack moved to amend Mr. Pammel's motion to include the five year term and it was seconded by Mr. Ribble. Mr. Pammel accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 85-C-049-3 by THE ENTERPRISE SCHOOL, under Section 3-103 of the Zoning Ordinance to amend SP 85-C-049 for private school of general education to permit change in development conditions and continuation of use, on property located at 1629 Beulah Road, Tax Map Reference 28-1((1))13, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

Page 639, June 4, 1996, (Tape 1), THE ENTERPRISE SCHOOL, SPA 85-C-049-3, continued from
Page 638

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.50 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Richard C. Lessard, Architect dated May 7, 1990, revised through January 30, 1996 and approved with this application, as qualified by these development conditions.*
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.*
5. The maximum daily enrollment shall be limited to twenty-nine (29) students.*
6. There shall be 21 parking spaces provided. All parking shall be on site as shown on the special permit plat.* The size and configuration of parking spaces shall satisfy the requirements of the Public Facilities Manual (PFM) as determined by the Director, Department of Environmental Management at the time of site plan review.
7. The hours of operation shall be limited to 7:45 a.m. to 3:30 p.m., Monday through Friday.
8. Right-of-way to 60 feet from the existing centerline of Beulah Road necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand from the Virginia Department of Transportation when a road improvement project is initiated in front of the site. Ancillary easements shall be provided to fifteen (15) feet behind the new right-of-way line. The applicant shall relocate the existing parking lot prior to dedication of the right-of-way and shall provide a screening yard equivalent to that which currently exists along the front lot line.* The parking lot shall not be relocated closer to any existing lot lines than currently exists.

9. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening requirements of Article 13. A modification to the transitional screening requirement shall be allowed along the front lot line to allow the existing vegetation to satisfy the requirement. This screening yard shall be maintained when the parking lot is shifted to accommodate the dedication for road improvements. A modification to the transitional screening yard along the southern lot line shall also be allowed to allow the infringement of a corner of the parking lot as shown on the special permit plat. The existing fencing shall be deemed to satisfy the barrier requirements of Article 13.*
10. If a waiver of the dustless surface agreement is not approved by the Director, Department of Environmental Management, the parking lots and driveway shall be paved.
11. There shall be no clearing or grading within the limits of clearing and grading as shown on the special permit plat, except for dead or dying vegetation and except for clearing necessary to maintain the septic field as shown on the special permit plat. The clearing for this septic field shall not exceed the line shown as "limit" on the plat.*
12. There shall be a maximum of eight (8) employees. One (1) student intern may also be on site.
13. Any lighting on site will be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall be a low-intensity design which directs the light directly onto the facility.
 - Shields shall be installed, if necessary to prevent the light from projecting beyond the parking lot area.
14. This special permit is approved for a period of five (5) years from June 12, 1996.

These development conditions incorporate and supersede all previous development conditions. The previously approved conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 641, June 4, 1996, (Tape 1), Scheduled case of :

9:30 A.M. PLAY N' LEARN, INC., APPEAL 96-Y-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is displaying two sets of play equipment associated with the retail sales use in the minimum required front yards of the property which is zoned C-8, in violation of Sect. 2-504 of the Zoning Ordinance. Located at 5800 Old Centreville Rd. on approx. 1.51 ac. of land zoned C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 59.

Tom Thomas, attorney for the appellant, came forward and informed the Board that he had just learned about the appeal on May 31, 1996. He asked the Board to defer action on the application to give the appellant time to prepare a survey.

Mike Congleton, Deputy Zoning Administrator, Ordinance Administration Branch, said staff had no objection to the deferral request. Mr. Pammel asked if timing was a concern with regard to deferring the appeal. Mr. Thomas replied that timing was not critical.

The BZA discussed possible deferral dates.

Mr. Dively said he lived near the use and it had been in its present state for quite some time.

Mr. Congleton said October 22, 1996 would be a good date.

Mr. Dively moved to defer A 96-Y-006 to October 22, 1996. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 641, June 4, 1996, (Tape 1), Scheduled case of :

9:30 A.M. STEPHEN M. & JOYCE B. DAWSON, APPEAL 96-M-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal denial of a Non-Residential Use Permit (Non-RUP) for a firing range in the C-8 District without special permit approval, based on determination that use was not legally established. Located at 7203 Columbia Pi. on approx. 7,013 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 71-1 ((1)) 94.

Chairman DiGiulian noted a letter requesting withdrawal of the application. Mr. Dively moved to accept the withdrawal of A 96-M-011. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 641, June 4, 1996, (Tape 1), Action Item:

Out of Turn Hearing Request
Debra L. Ellington

Mr. Hammack moved to approve the Out of Turn Hearing Request for Debra L. Ellington. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting. The application was scheduled for July 16, 1996 at 8:00 p.m.

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Discussion took place between the Board members and Ms. Kelsey about the case load scheduled for the months of July, August, and September of 1996. Ms. Kelsey indicated the number and the types of cases scheduled for the respective months.

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Approval of May 28, 1996 Resolutions

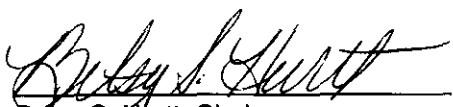
Mr. Ribble moved to approve the May 28, 1996, Resolutions. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

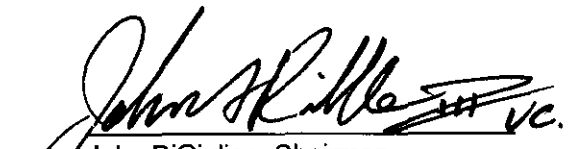
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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Regina Thorn

Approved on: July 23, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 11, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Mr. Hammack made a motion that the Board of Zoning Appeals go into Executive Session to discuss personnel and scheduling matters. Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0. There were no staff members in attendance. The Board returned to the Board Auditorium and reconvened the meeting at 9:35 a.m.

Mr. Hammack moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 643, June 11, 1996, (Tape 1), Scheduled case of:

9:00 A.M. PETER J. MURRAY & THOMAS E. HORNBAKER, VC 96-H-037 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure to remain 3.1 ft. and 12.0 ft. from side lot lines. Located at 12539 Lawyers Rd. on approx. 9.34 ac. of land zoned R-1. Hunter Mill District. Tax Map 35-2 ((1)) 19, 20 and 21. (IN ASSOCIATION WITH SE 95-H-078).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Peter J. Murray, 2517 Fallon Drive, Herndon, Virginia, replied that it was.

Lorrie Kirst, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She said the applicant was requesting approval to allow an accessory storage structure, which was constructed in the 1940s, to remain 12 feet from the western side lot line and 3.1 feet from the northern side lot line. On May 20, 1996, the Board of Supervisors approved SE 95-H-078 which established a plant nursery use on the property and a copy of the development conditions imposed with the approval is contained in Appendix 4 of the staff report. Ms. Kirst pointed out that one of the conditions required that the applicant obtain a variance from the Board of Zoning Appeals for the accessory structure.

Mr. Murray asked that the request be granted because the structure has been in existence since the 1940s. He said approximately 20 years ago the farm was divided up and the Folkstone Community was built behind the subject property with the lot line being re-established just behind the barn structure. Mr. Murray added there is approximately 20 acres of homeowners association open space behind the structure and the closest private lot line is about 600 feet away.

There were no speakers and the public hearing was closed.

Mr. Hammack made a motion to grant VC 96-H-037 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-037 by PETER J. MURRAY AND THOMAS E. HORNBAKER, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain 3.1 feet and 12.0 feet

Page 644, June 11, 1996, (Tape 1), PETER J. MURRAY & THOMAS E. HORNBAKER, VC 96-H-037, continued from Page 643)

from side lot lines, on property located at 12539 Lawyers Road, Tax Map Reference 35-2((1))19, 20, and 21, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 9.34 acres.
4. The applicant has satisfied the nine required standards for a variance; in particular, this building has been there since 1940, which may even predate the Ordinance which came in 1939, or it was constructed right after the Ordinance at which time it was part of the farm.
5. For the reasons stated in the applicant's testimony, the granting of the variance request will not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

Page 645, June 11, 1996, (Tape 1), PETER J. MURRAY & THOMAS E. HORNBAKER, VC 96-H-037, continued from Page 644

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the accessory structure (Building I) shown on the plat prepared by Peter R. Moran, dated September 8, 1995 with revisions through March 11, 1996, submitted with this application and is not transferable to other land.

This approval, contingent upon the above noted condition shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 645, June 11, 1996, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY L. & SANDRA M. MCKINNEY, SP 96-D-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.7 ft. from side lot line and 0.1 ft. from rear lot line. Located at 7305 Redd Rd. on approx. 15,782 sq. ft. of land zoned R-2 and HC. Dranesville District. Tax Map 40-3 ((21)) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Gregory McKinney, 7305 Redd Road, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a modification of 12.3 to the side yard requirement and 17 feet to the rear yard requirement in order for a 17.1 foot high play house to remain 2.7 feet from the side lot line and 0.1 feet from the rear lot line.

Mr. McKinney said this was a continuation of the appeal that was begun in November 1995 at which time the BZA asked that they file a special permit hopefully to resolve the original argument. He said the play house was built in a non-permit type of arrangement based on what he believed to be a misunderstanding with a member of the County staff. Mr. McKinney said it had been a long ordeal and they had considered giving up, but the neighbors and his children encouraged him to pursue the matter.

Mr. Hammack and the speaker discussed why he had located the play house in its present location. Mr. McKinney said an employee had told him it was her understanding that there was not an ordinance that governed children's play houses.

There were no speakers and the public hearing was closed.

Mr. Pammel made a motion to grant SP 96-D-008 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-D-008 by GREGORY L. AND SANDRA M. MCKINNEY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.7 feet from side lot line and 0.1 feet from rear

Page 646, June 11, 1996, (Tape 1), GREGORY L. & SANDRA M. MCKINNEY, SP 96-D-008, continued from Page 645)

lot line, on property located at 7305 Redd Road, Tax Map Reference 40-3((21))22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified playhouse shown on the plat submitted with this application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated March 18, 1996, submitted with this application, as qualified by these development conditions.
3. If the play house falls into disrepair, it shall be removed.

Page 647, June 11, 1996, (Tape 1), GREGORY L. & SANDRA M. MCKINNEY, SP 96-D-008, continued from Page 646)

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. McPherson and Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 647, June 11, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY A. ELMENDORF, VC 96-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7829 Frances Dr. on approx. 18,606 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (5) 21B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Thomas W. Smith III, HAZEL & THOMAS, P.C., 9324 West Street, 3rd Floor, Manassas, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a variance to allow a garage to be located in the front yard. Ms. Kelsey said staff had received four letters in opposition to the request and said Rebecca Goodyear, Zoning Inspector with the Zoning Enforcement Branch of the Zoning Administration Division, was present to respond to questions concerning the zoning violation.

A discussion took place between the BZA and staff regarding whether the structure was a garage or an accessory structure. Ms. Kelsey said the building permit had been issued for a garage but a plat could not be located which actually showed the location of the garage on the lot. She called the BZA's attention to the photographs and noted that the structure did look as a garage. Ms. Goodyear said the structure is considered a garage because it meets the Building Code requirements as a garage. The Zoning Ordinance does not have a definition which states that a garage has to be used to house a vehicle as opposed to lawn equipment.

Mr. Dively asked if there was a distinction in the rules between detached garages and accessory structures. Ms. Kelsey said the Ordinance only allows 200 square feet in size for storage structures and the garage exceeds that. Mr. Ribble asked if it would make a difference if the structure was attached to the house. Mr. Kelsey explained that if the garage was attached to the house it would become part of the principal structure and would have to be attached by a roof and wall construction and meet the Building Codes. However, the structure is 34.5 feet from the front lot line and a variance would then be needed for the principal structure. Mr. Dively said it appears that the structure was constructed in accordance with the building permit.

In response to a question from Mr. McPherson regarding the stamp on the plat, Ms. Kelsey said Ms. Goodyear had indicated that stamp was similar to the one used by staff in the Permit Plan Review Branch. Mr. Dively commented that staff issued a building permit and then "changed their mind" after the structure was built. Ms. Kelsey noted that a complaint was filed by a neighbor.

Mr. Hammack asked what the complaint encompassed. Ms. Goodyear said the complaint addressed both issues, what the garage was being used for and the fact that an accessory structure was located in a front yard. Mr. Hammack said one of the opposition letters stated that the applicant did not reside on the property and if that was the case. If it were, he asked if that was permissible. Ms. Goodyear said if that were the case then staff would consider the principal use to be a warehousing establishment which is not permitted in a residential district. In response to a question from Chairman DiGiulian, Ms. Goodyear said she has driven by the property early in the morning on other cases and has seen lights on in the house

and a vehicle parked in the yard. She added that the applicant has stated that he does reside on the property.

Mr. Dively said if the property is being used for some commercial venture, then staff has to issue a citation regarding that issue and it has to be appealed. He added that the BZA could not address whether the property is being used in a commercial format. Chairman DiGiulian agreed. Mr. Dively said it appears that the complainants do not have a problem with the garage per se, but with how the garage is being used.

Mr. Smith said the applicant bought the property as his residence in 1989. The garage was built pursuant to an approved building permit and the applicant was requesting variance approval to allow the existing garage to remain in the present location. Mr. Smith noted the shallowness of the lot and referenced a copy of the building permit and said the County stamp is clearly noted on the permit. He said the house location plat is dated and stamped by the Division of Inspection Services on September 5, 1989, with an additional stamp and signature of the Zoning Administrator. He added that the setbacks of 35 feet and 15 feet were written by a County official and can be verified by the applicant's mother, who obtained the building permit. Based on County approval, the applicant contracted a builder and picked a design that would be in character with the neighborhood at a cost of approximately \$20,000. Mr. Smith said the applicant was surprised to receive a Notice of Violation after six years as he was unaware of any violations. He proceeded to address each of the variance standards and called the BZA's attention to three letters in support from adjoining neighbors.

Mr. Pammel asked how many vehicles were parked in the garage. Mr. Smith replied there was one approximately 4 years ago.

Mr. Pammel questioned why the applicant had not filed a special permit for a building in error. Jane Kelsey, Chief, Special Permit and Variance Branch, said the garage is an accessory structure and the mistake section of the Ordinance does not include that accessory structures.

Mr. Ribble asked how staff became aware of the violation. Ms. Goodyear said she received a telephone complaint and the citizens questioned how the applicant had obtained a building permit for an accessory structure in the front yard. After researching the building permit, they discovered that the permit had been issued in error in 1989. Mr. Ribble asked what year Sherwood Lane was widened. Mr. Goodyear said she has been working in the Mount Vernon District for eight years and Sherwood Lane has been at its present width since that time.

There were no speakers in support and Chairman DiGiulian called for speakers in opposition.

Charles Baker, 7826 Frances Drive, Alexandria, Virginia, said he had filed the complaint and that he believed the applicant had made a mockery of the neighborhood and that he had watched the garage being built. Mr. Baker said the applicant is using the garage to store items that he sells in his antique business located in Alexandria. He said the garage is an eyesore, it adversely impacts the neighborhood, the applicant was aware that it was not permitted under the Zoning Ordinance, and believed the structure should be removed.

A discussion took place between the BZA and the speaker as to whether he had filed a complaint when the garage was being constructed and if he would feel differently if the structure was used as a garage. Mr. Baker said he had filed a complaint but was told that a building permit had been issued and agreed that the structure was basically in conformance with the permit. He said the applicant's mother is a real estate broker and therefore should have been aware of the Zoning Ordinance restrictions with respect to accessory structures. Mr. Baker said the garage should be torn down.

With respect to the alleged garage/flea market sales, Mr. Baker said the applicant is using the garage for storing items that he sells on weekends in the garage/flea market sales. He added that he had been working with Zoning Enforcement on this complaint.

Mr. Dively said he was not inclined to have someone tear down a \$20,000 structure once the County had issued a building permit, but that he was concerned that it was being used for an inappropriate use.

Ms. Goodyear said it was staff's policy to prepare a court case based on the allegations as to when garage sales occur and that she personally has seen two take place in the calendar year of 1995. The County Attorney's office has advised staff that this was not sufficient. Ms. Goodyear said she had given Mr. Baker her beeper number so that she could visit the site on a Saturday to verify that a garage sale was occurring.

Mr. Dively questioned why witnesses could not be used in court cases. Ms. Goodyear said the County Attorney's office had informed Jane Gwinn, Zoning Administrator, they would prefer to use County employees as opposed to citizens. Mr. Dively said that implies that County employees were the only reliable witnesses. Mr. Hammack said the County Attorney's office had funny rules about some things. Mr. Dively said that makes it pretty difficult to enforce the Ordinance.

In response to a question from Mr. Hammack, Ms. Goodyear said a member of staff at that time had made a mistake and issued the building permit in error but a complaint was filed and Zoning Enforcement had to investigate and take appropriate action. She added that the building permit was already finished out, therefore there was nothing to revoke.

Mr. Dively made a motion that someone from the County Attorney's office attend a BZA meeting and explain why citizens cannot testify in a County court case. Mr. Ribble seconded the motion which carried by a vote of 7-0. The Board asked that staff try to schedule the application the meeting in two weeks.

Ben Tabarini, 7836 Midday Lane, Alexandria, Virginia, spoke on his behalf and the Sherwood Hall Citizens Association and said the citizens are upset about the garage/flea markets that are occurring on site. Mr. Tabrini said the neighborhood is fighting "commercial creep." He added that the applicant does not reside on the property.

Mr. McPherson asked the speaker if his primary concerns dealt with commercial creep and use versus the site location and why he believed variances are illegal. Mr. Tabrini replied "both" and he stated that he believed the garage should not be in the front yard. He added that variances did not fall under the Comprehensive Plan, thus illegal.

A discussion took place between the BZA and the speaker with regard to garage/flea market sales that occur on site. Mr. Tabrini said he had personally witnessed three to four sales with ten to fifteen people in attendance which impacts the vehicles traveling down Frances Drive and Sherwood Hall Lane. He said he did not know if the sales were advertised.

David E. Bolte, 836 Herberts Spring, Alexandria, Virginia, Chairman of the Planning and Zoning Committee of the Mount Vernon Council of Citizens, said the Committee voted to recommend denying the variance request. He added that he could not testify personally to the activities that occur on the applicant's property but that the Committee does try to support the neighbors when concerns are brought to them.

An unidentified citizen spoke up from the audience and indicated that one of the speakers had to leave the auditorium for a minute and would be right back.

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The Board recessed at 10:25 a.m. to allow the citizen to return and reconvened at 10:26 a.m. When the speaker came forward, it appeared there had been some confusion since she was the next applicant.

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Shirley Greene, 7825 Frances Drive, Alexandria, Virginia, said she and her husband purchased their property six months ago believing it was a good all around neighborhood and that she believed that the applicant's property was devaluing the other properties. She objected to the garage being used for

storage and that she would prefer that the garage be relocated to the rear of the lot. Mrs. Greene added that she and her husband did not appreciate receiving a threatening telephone call from the applicant the previous night and she had no idea how he obtained their unlisted number.

Mr. Dively asked the intent of the threat. Mrs. Greene said the applicant had told them that he would "hard ball" them in the neighborhood. In response to a question from Mr. Hammack as to how they knew it was the applicant, Mrs. Greene said she was not saying they have a caller i.d. but they may have one.

Chairman DiGiulian pointed out to the speaker that she had purchased her property knowing the conditions of the surrounding neighborhood. Mrs. Greene said that that may be correct but she would like to see changes. Mr. Dively asked the speaker if she had seen garage/flea markets being conducted on the site. Mrs. Greene said she had not.

In rebuttal, Mr. Smith said he did not believe the speakers' comments were relevant. He assured the BZA that the applicant has not had more than two garage sales in the past year and will not do so in the future. Mr. Smith said the applicant had contacted the Greens to ask if they would support the application, not to threaten them. He noted that the three neighbors who are the most impacted have no objections to the garage.

In response to questions from Mr. Hammack, Mr. Elmendorf replied that he resides on the property, he only holds two yard sales per year, and that he does not advertise the yard sales.

Mr. Hammack asked the speaker if he had obtained permits for the yard sales. Mr. Elmendorf said Ms. Goodyear had told him that he did not need permits for the yard sales. Mr. Dively said everyone knew how reliable that was.

Mr. Pammel said the garage is 625 square feet in size and he found it hard to believe that all the applicant was storing there was tools and paints. Mr. Elmendorf said he relocated to Virginia after losing his job in Pennsylvania. His residence in Pennsylvania was much larger than the one he currently resides in; therefore, some of his furniture is stored in the garage.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to grant VC 96-V-036 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

Mr. Pammel said he would support the motion because from the standpoint of the law they had no other choice since the building permit was approved by the County and that he believed the Sixty-Day Rule would be applicable.

Mr. Ribble said he too would support the motion although reluctantly and suggested to the applicant that he might clean up his property to bring it more in line with the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-036 by JEFFREY A. ELMENDORF, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 square feet, on property located at 7829 Frances Drive, Tax Map Reference 102-1((7))(5)21B, Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 18,606 square feet.
4. But for the testimony and complaints about the use, the issue before the BZA would only be a variance application subject to normal perimeters.
5. The BZA is charged with determining whether the use is appropriate; and, the structure was approved by the County 6 to 7 years ago and has been built.
6. It is a reasonable approach to the lot since it is a classic corner lot problem that the BZA faces frequently.
7. The BZA was concerned with the type of use that was outlined by the testimony but the BZA has mechanisms for taking care of that.
8. The issue before the BZA was whether or not this variance request was reasonable and meets the standards.
9. From the standpoint of the law, the BZA has no other choice but to grant the variance since the structure was approved by the County and the 60-day rule would be applicable since the County made the mistake and it was not detected within that time frame.
10. It appears there is a problem between the applicant and the neighbors and the applicant might consider cleaning up his property to bring it more in line with the surrounding lots.
11. There is a mechanism to control the number of yard sales the applicant conducts over the period of year.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

Page 652 June 11, 1996, (Tape 1), JEFFREY A. ELMENDORF, VC 96-V-036, continued from Page 651

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific accessory structure (detached garage) shown on the plat prepared by Alexandria Surveys, Inc., dated March 15, 1996, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards.

Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 652 June 11, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN J. POHEDRA, VC 96-D-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from rear lot line. Located at 12594 Cross Hollow Ct. on approx. 9,138 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 5-4 ((8)) 310.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan J. Pohedra, 12594 Cross Hollow Court, Herndon, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a 4.2 foot variance in order to construct a porch addition 20.8 feet from the front lot line. Ms. Kelsey noted that staff had received three letters in support of the application.

Mr. McPherson said he was still in the learning process and asked if this application fell under the provision that if decks are included on the site plan the builder can add them without a variance. Ms. Kelsey said that applies to PDH zoning.

Ms. Pohedra said they would like to screen in their existing deck and cited the unusual shape of their lot. She said the addition will be similar to others in the neighborhood and noted that there is homeowners open space to the rear of her lot, therefore the land will never be developed. Ms. Pohedra said the homeowners association has approved the request, there are no objections from their neighbors, and the addition will be architecturally compatible with the existing dwelling.

There were no speakers and the public hearing was closed.

Mr. Ribble made a motion to grant VC 96-D-035 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-035 by SUSAN J. POHEDRA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.8 feet from rear lot line, on property located at 12594 Cross Hollow Court, Tax Map Reference 5-4((8))310, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 19, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-3(Cluster).
- 3. The area of the lot is 9,138 square feet.
- 4. The applicant met the nine required standards for the granting of a variance; in particular, the shallowness of the lot.
- 5. The applicant testified that the common area is a storm drainage area which will not change and is owned by the homeowners association.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (enclosed deck) shown on the plat prepared by Dewberry & Davis, dated March 22, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 654, June 11, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JOHN BOURBEAU & DAWN YAGER, VC 96-P-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from front lot line. Located at 2816 Cameron Rd. on approx. 10,875 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((5)) 57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Bourbeau and Dawn Yager, 2816 Cameron Road, Falls Church, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicant was requesting a 8.0 foot variance to the minimum front yard requirement in order to construct a porch addition.

Mr. Hammack asked if there were similar porches in the neighborhood and if those had required variances. Ms. Kelsey deferred to the applicant.

Mr. Bourbeau said there were similar porches on other houses in the neighborhood. Ms. Yager said they presumed that variances were needed based on information they had obtained from their surveyor. She added that the house setbacks differ because it is an older neighborhood.

A discussion took place between the BZA and the applicants with regard to the design of the addition. Mr. Bourbeau explained they were proposing to add a third floor and a wrap around porch.

The applicants said the house was built 50 years ago and since they purchased the house they have had one child and plan to have another and they would like additional living space. Ms. Yager said they had

considered adding on to the rear of the house but one of the features that attracted them to the house was the large back yard and they would prefer not to disturb that area.

Chairman DiGiulian said it appeared that the house being sited so close to the street was the hardship and the applicants said that was correct.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant VC 96-P-038 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-038 by JOHN BOURBEAU AND DAWN YAGER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.0 feet from front lot line, on property located at 2816 Cameron Road, Tax Map Reference 50-2((5))57, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owner of the land.
- 2. The present zoning is R-4.
- 3. The area of the lot is 10,875 square feet.
- 4. The applicant's statement of justification cites exceptional topographic conditions as the house sits on a hill and the porch will not be very obtrusive because of that topographic condition.
- 5. The plat shows how far forward the house is sited on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Page 656 June 11, 1996, (Tape 1), JOHN BOURBEAU & DAWN YAGER, VC 96-P-038, continued from Page 655

6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (porch) shown on the plat prepared by Alexandria Surveys, Inc., dated February 28, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. McPherson seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 656, June 11, 1996, (Tape 2), Scheduled case of:

9:30 A.M. JOHN WOODWARD, SP 96-Y-011 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 13.5 ft. from side lot line and deck 18.1 ft. from side lot line. Located at 6106 Oakengate Way on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 8. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Woodward, 6106 Oakengate Way, Centreville, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report and said the applicant was requesting two modifications to the minimum yard requirements. The first modification was to permit a screened porch to

be located 13.5 feet from the north side lot line requiring a modification of 6.5 feet. The second request was to allow a deck to be located 18.1 feet from the south side lot line requiring a modification of 1.9 feet.

Mr. Woodward said he was proposing to build a deck along the length of the back of the house which will be similar to others in his neighborhood. He added that the footprint of his house does not meet the 20 foot setback as required by the Zoning Ordinance.

Mr. Dively asked if the deck option was offered by the builder. Mr. Woodward said he chose to forego the deck at the time of purchase. Mr. McPherson commented this is the "door to nowhere" and in this instance there are two doors. Mr. Woodward said that was correct and added that he presently keeps the doors locked with a dead bolt so his children cannot open the doors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 96-Y-011 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 96-Y-011 by JOHN WOODWARD, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 13.5 feet from side lot line and deck 18.1 feet from side lot line, on property located at 6106 Oakengate Way, Tax Map Reference 53-4((5))(2)8, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,000 square feet.
4. The deck is simply an extension of the existing dwelling and the addition is actually inside the line of the dwelling.
5. The variance of 1.9 feet is minimal.
6. There is a floodplain behind the applicant's property and the configuration of the house on the lot is set back to accommodate the curb on the cul-de-sac.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the location of the addition (screened porch) and the deck shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated September 23,

1989, and revised by John Woodward through April 3, 1996, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The screened porch and the deck shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this special permit.

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Page 658, June 11, 1996, (Tape 2), Scheduled case of:

9:30 A.M. ETHEL JEAN AHMANN, VC 96-H-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots, proposed Lot 1-C with a lot width of 2.19 ft. Located at 1510 Crowell Rd. on approx. 5.30 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 7C and 7E (outlot).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ethel Jean Ahmann, 1522 Crowell Road, Vienna, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report and said the applicant was requesting a variance to allow the subdivision of one lot and one outlot into two reconfigured lots, with proposed Lot 1C having a lot width of 2.19 feet. The minimum lot width in a R-E Zoning District is 200 feet; therefore, a variance of 197.81 feet is requested. Access to proposed lot 1C will be via Crowell Road. The property's driveway will be constructed in an existing dedicated access easement which is located in-part along the northern property line of proposed Lot 3A and in-part on proposed Lot 1C. She said following a discussion with the applicant just prior to the public hearing staff learned that the applicant would like to maintain the option of using an existing access easement which goes through Lot 4 because of a potential Virginia Department of Transportation request.

Ms. Stagg addressed Standard 2 and 6 as outlined in the staff report and said that Outlot "A" was created in 1993 by the applicant's husband (now deceased) and that lots which had no road frontage in 1993 were not considered build able lots. Staff noted that a denial of this request would prohibit the applicant from constructing a home on her property.

Chairman DiGiulian said he understood the request to simply be making the outlot into a build able lot without any addition/deletion of land area. Ms. Stagg explained that currently Outlot A has no frontage on Crowell Road and the applicant was proposing to add a thin strip of property which will be taken from current Lot 3. She added there will also be a land exchange occurring that was not part of the application.

Mr. McPherson said he was still trying to learn the process and asked if the position that staff was taking in this application was standard policy regarding usable use of the land. Ms. Stagg pointed out that this situation was created by the applicant based on a previous subdivision. Jane Kelsey explained with regard to this type of application, it was staff's belief that if the applicant created the subdivision which established the outlot thus staff could not state that the application met the nine variance standards. Ms.

Kelsey said the history of the property was outlined in the staff report. Mr. Hammack asked if the applicant had gone through the subdivision process and Ms. Kelsey replied in the affirmative. Ms. Stagg pointed out that the property had been subdivided twice, once in 1989 and once in 1993 without a public hearing.

Ms. Ahmann said she would like to use her property as a residential lot and added that without a variance the lot would continue to be of no marketable value, the money that she paid for the land is not available to her or her family, and she will continue to be liable for the annual taxes of approximately \$1,700. She said the lack of frontage precludes the lot from being used as a residential lot on Crowell Road. Ms. Ahmann addressed the standards and said if she could find another alternative she would.

Mr. Pammel said in looking at the plat it appeared that Lot 4 did not have the required 200 foot frontage, proposed lot 3A is less than the 200 foot required frontage because 2.19 feet was removed to be the minimal frontage for Lot 1C, and Lots 1B and 2A does have the required 200 foot frontage. Ms. Stagg explained that the difference is that the lot width is measured at the building setback line, not the street. Mr. Pammel said he had overlooked that.

Carol Dowd, 1536 Crowell Rod, Vienna, Virginia, said she believed the proposed use would be a good use and that she saw no reason not to grant the request.

Ron Stanton, 10309 Brown Mills Road, Vienna, Virginia, said he owned abutting Lots 9, 10, 11 and that he would like to see the land developed rather than remain as pasture land.

Peter Gates, 1651 Stowe Road, Reston, Virginia, said he was not really opposed to the application but that he did question the ownership of Lot 3.

Ms. Ahmann responded to the speaker's question by explaining that what is now Lots 2A and 3A is owned by the same gentleman, Erich Von Marbod, who resides in Brussels, Belgium, and Lot 4 is owned by the Katz family. Mr. Hammack asked the applicant what lot she owned. Ms. Ahmann said she had owned Lot 1B with Lot 1C connected to Lot 1B, but she sold Lot 1B in December 1995 and she currently owns Outlot A and has had Lot 1C disconnected.

Mr. Hammack asked if that had constituted a subdivision. Ms. Kelsey said a property owner could sell land through metes and bounds without getting subdivision approval. Ms. Stagg explained that the configuration where Lot 1B was split from Outlot A was an approved subdivision and that occurred in 1993. After that time, Mr. Ahmann passed away and Ms. Ahmann sold Lot 1B leaving her with only Outlot A, which is the only portion she owns.

Ms. Ahmann explained that this all started when she and her husband owned Lot 1B and Mr. Von Marbod owned Lot 2A and what is now Lot 3, and the remainder of the property was all one lot. When the land was put up for sale, Ms. Ahmann said she and her husband purchased the lot to the rear, friends of theirs purchased the house and two acres with the idea of purchasing the remainder of the lot in the future, and Mr. Von Marbod purchased the remainder of the land. She said Mr. Von Marbod wanted the land to the rear of his lot so they did a land exchange hoping to make the outlot a build able lot.

Mr. Gates came back to the podium and said he was very familiar with the area and that he believed the use would be appropriate.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he could understand the issues and was sympathetic to the problems the applicant has experienced, but unfortunately the project was not well planned which created a self inflicted hardship. Based on his belief that the

application did not meet the variance standards, Mr. Pammel made a motion to deny the request. Mr. Hammack seconded the motion.

Mr. Dively opposed the motion and stated it was not clear to him that this was possibly a problem that was inherited and the BZA has looked in disfavor on outlots. He believed the land will be of no benefit to anyone if left in its present state.

Mr. Hammack said this was clearly a case of self inflicted hardship and he believed it could have been handled differently. He did not believe the applicant met the hardship requirements.

Chairman DiGiulian opposed the motion as he believed it was in conformance with most of the lots in the area. He added that it would have been nice if the applicant had planned differently but no one can see into the future and circumstances do change.

The motion failed by a vote of 2-4 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Dively, Mr. McPherson, and Mr. Ribble voting nay. Mr. Kelley was not present for the vote.

Mr. Dively made a motion to grant VC 96-H-029 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 4, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-029 by ETHEL JEAN AHMANN, under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots, proposed Lot 1-C with a lot width of 2.19 feet, on property located at 1510 Crowell Road, Tax Map Reference 18-4((1))7C and 7E (outlot), Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.30 acres.
4. This is a problem that was inherited.
5. Variances have the most legislative flavor of any action taken by the BZA.
6. In general, the BZA has time and again looked with disfavor on outlots.
7. This is a piece of property that will be of no use to anyone if left out there.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of Lots 1C and 3A as shown on the plat prepared by John Schiller, dated November 20, 1995, submitted with this application and is not transferable to other land.
2. The recorded driveway easement located in-part on Proposed Lot 3A and in-part on Proposed Lot 1C shall remain.
3. Driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.
4. If deemed appropriate by the Department of Environmental Management (DEM), a landscaping plan shall be reviewed and approved by DEM prior to subdivision plat approval.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Mr. Hammack and Pammel voting nay. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 661, June 11, 1996, (Tape 1), Scheduled case of:

9:30 A.M. RITA POWELL, SP 94-Y-059 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit a kennel associated with scientific research. Located at 4500 Upper Cub Run Dr. on approx. 6.00 ac. of land DEF. REQ. zoned I-3, WS, and AN. Sully District. Tax Map 33-4 ((1)) 9.

Page 662, June 11, 1996, (Tape 1), RITA POWELL, SP 94-Y-059, continued from Page 661)

(MOVED FROM 1/31/95, 3/28/95, 6/6/95, 6/27/95, 11/14/95, 3/26/96, 5/28/96 AND 6/4/96 AT APPLICANT'S REQUEST)

Chairman DiGiulian said the BZA was in receipt of a deferral request. The applicant's attorney, Charlie Shumate, said the applicant was requesting a deferral for the reasons stated in the letter to the BZA.

Mr. Ribble asked staff for a suggested date. Jane Kelsey, Chief, suggested deferring the applicant indefinitely to allow the Board of Supervisors to act on the proposed Zoning Ordinance amendment.

Mr. Hammack pointed out that this applicant had been requesting deferrals since January 1995 and asked if staff had any objections to another deferral. David Hunter, Staff Coordinator, said the applicant has been trying to develop a protocol with respect to the kennel and the associated scientific research to bring the use into conformance with the I-3 Zoning District. He added that the applicant submitted a protocol in May 1995 which staff did not believe satisfied the I-3 requirements. In May 1996, staff received a second protocol and it is still staff's opinion that the request is not consistent with the purpose and intent of the I-3 District; therefore, staff continues to recommend denial of the request. The applicant is now requesting a Zoning Ordinance amendment which Mr. Hunter pointed out could have been requested two years ago.

Mr. Ribble so moved. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 662, June 11, 1996, (Tape 1), Scheduled case of:

9:30 A.M. NABIL MANSOUR, Appeal 96-L-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that appellant is operating a motor vehicle storage and impoundment yard without an approved site plan and a valid Non-RUP. Located at 5605 Vine St. on approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31.

Chairman DiGiulian noted that the notices were not in order. Mr. Mansour said the notices were not done for a reason. He said he has complied with the County requests and hired an engineering firm to submit a minor site plan which has been done. Mr. Mansour said the property has been used for the same purpose since the '80s and the County has issued him permits until approximately two months when they realized they had made a mistake.

Jane Kelsey, Chief, Special Permit and Variance Branch, notices were not in order and the public hearing cannot go forward. The BZA members said the appellant was explaining why he had not done the notices.

Following further explanation, Chairman DiGiulian asked that the appellant submit a formal request with a specific amount of time in the request. Mr. Mansour agreed.

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Page 642, June 11, 1996, (Tape 2), Information Item:

Request for Additional Time for SP 91-D-064, Shiloh Baptist Church

Mr. Hammack made a motion to grant the applicant's request. Hearing no objection, the Chair so ordered. The new expiration date is May 6, 1997.

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Page 463, June 11, 1996, (Tape 2), Information Item:

Out of Turn Hearing Request for
Theodore Jackson, VC 96-Y-077

Chairman DiGiulian said it was his understanding that the BZA at this point in time had nine cases on August 6th and six cases on August 13th according to a memorandum that the members had received from James Zook, Director of Comprehensive Planning. Jane Kelsey, Chief, Special Permit and Variance Branch, said there are ten cases scheduled for both the August 6th and August 13th public hearing and that additional applications were received after Mr. Zook's memorandum. Chairman DiGiulian asked if there were any cases waiting to be scheduled and Ms. Kelsey said all cases received by the Special Permit and Variance Branch as of last Thursday had been assigned a public hearing date.

Mr. Hammack made a motion to deny the applicant's request. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. The application is scheduled for August 13, 1996.

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Page 463, June 11, 1996, (Tape 2), Information Item:

Out of Turn Hearing Request for
James W. Swing, VCA 96-S-008

Mr. Hammack made a motion to deny the applicant's request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. The application is scheduled for August 13, 1996.

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Page 463, June 11, 1996, (Tape 2), Information Item:

Approval of June 4, 1996 Resolutions

Mr. Hammack so moved. The motion carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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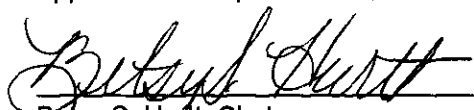
Jane Kelsey, Chief, Special Permit and Variance Branch, asked if the BZA had a preference as to when they met with the County Attorney regarding their earlier request. Chairman DiGiulian suggested 9:00 a.m. The Board members agreed.

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As there was no other business to come before the Board, the meeting was adjourned at 11:45 a.m.

Minutes by: Betsy S. Hurtt

Approved on: September 10, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 18, 1996. The following Board Members were present: Chairman John DiGiulian; Timothy McPherson; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:10 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 665, June 18, 1996, (Tape 1), Scheduled case of:

8:00 P.M. GENE W. HENDRIX, VC 96-V-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 34.4 ft., 29.4 ft., 32.5 ft. and 40.0 ft. from street line of a corner lot and permit existing dwelling to remain 34.4 ft. from front lot line and accessory structure to remain in front yard. Located at 11374 River Rd. on approx. 29,144 sq. ft. of land zoned R-E. Tax Map 119-4((2))(6)1-10. (DEF. FROM 6/4/96 FOR ADDITIONAL INFORMATION)

Jane Kelsey, Chief, Special Permit and Variance, said this case had been deferred for additional information from the Zoning Enforcement Branch. She called the BZA's attention to a Notice of Violation which had been issued to the applicant giving him two weeks to remove the wood that was being stored in the right-of-way area.

Gene Hendrix, 11374 River Road, Lorton, Virginia, said he would be happy to answer any questions the BZA might have with respect to the information that he had submitted following the June 4, 1996 public hearing. Mr. Hendrix believed the requested improvements will enhance the property and read a portion of the presentation presented at the previous public hearing. He said if it was the BZA's intent to grant the variance he asked that the eight day waiting period be waived.

A discussion took place between the BZA and the applicant regarding the location of the wood in the right-of-way and the Notice of Violation that he had received. Mr. Hendrix agreed to move the wood within whatever time limit was stipulated and submitted photographs of the property to the BZA.

Chairman DiGiulian called for speakers in support of the request. The following came forward: Jerry Wilson, 8380 Greensboro Drive, Building 5, Unit 1024, McLean, Virginia; Jim Malara, 4700 Broadbrook Drive, Bethesda, Maryland, holds first deed of trust on 5901 Mount Vernon Boulevard; and, Lowell Curtis, 11371 River Road, Lorton, Virginia. They believed the request would improve the appearance of the neighborhood, spoke to the character of the applicant, and believed that the applicant was being singled out for enforcement procedures by the Association.

No one was present to oppose the application and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 96-V-026 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 28, 1996, with the following addition: "4.

The applicant will remove the wood from the right-of-way within thirty (30) days." The BZA also waived the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-026 by GENE W. HENDRIX, under Section 18-401 of the Zoning Ordinance to permit construction of additions 34.4 feet, 29.4 feet, 32.5 feet and 40.0 feet from street line of a corner lot and permit existing dwelling to remain 34.4 feet from front lot line and accessory structure to remain in front yard, on property located at 11374 River Road, Tax Map Reference 119-4((2))(6)1-10, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 18, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 29,144 square feet.
4. The applicant met the nine required standards for the granting of a variance citing the testimony that the Board heard on June 4, 1996, and at this public hearing.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling, additions (balconies, deck, stairs) and detached garage shown on the plat prepared by Jerry Wilson, dated March 7, 1996, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.
4. The applicant will remove the wood from the right-of-way within thirty (30) days.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0-1. Mr. McPherson abstained from voting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 667, June 18, 1996, (Tape 1), Scheduled case of:

Approval of Minutes from April 23 and April 30, 1996

Mr. McPherson made a motion to approve the minutes as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 667, June 18, 1996, (Tape 1), Scheduled case of:

Request for Reconsideration for VC 96-V-036, Jeffery Elmendorf
from Charles Baker, Bernard J. Tabarini, and Christopher Granger

Mr. Pammel said Supervisor Hyland had raised some issues indicating that the testimony presented at the public hearing might have been inaccurate and the BZA might possibly not have had all the facts prior to making its decision. He said based on that information he believed the BZA should reconsider its action and hold another public hearing.

Mr. Hammack seconded the motion for purposes of discussion. He said the issue before the BZA was narrow and that the variance dealt only with a garage which was constructed in the front yard under a building permit that was issued in 1989. Mr. Hammack added that the issue of whether the applicant was operating a commercial activity out of a residential structure was not a part of the variance request. He said he would support the request for reconsideration out of deference to Supervisor Hyland. Mr. Ribble agreed with Mr. Hammack's comments.

Chairman DiGiulian called for the vote and the motion failed for the lack of four votes. Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian, Mr. Kelley, and Mr. McPherson voting nay. Mr. Dively was not present for the vote.

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Approval of June 11, 1996 Resolutions

Mr. McPherson made a motion to approve the Resolutions as submitted by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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8:00 P.M. VIRGINIA PSYCHIATRIC CO., INC., DBA DOMINION HOSPITAL, Appeal 96-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's interpretation of Condition #14 of Special Exception 90-M-005 regarding the term "violent patient". Located at 2960 Sleepy Hollow Rd. on approx. 2.54 ac. of land zoned R-3, HC and SC. Mason District. Tax Map 51-3 ((1)) 9A.

Chairman DiGiulian reminded those present that the only issue before the BZA dealt with whether the Zoning Administrator's determination was a valid one and asked that the speakers address that issue only. Mr. Hammack made a motion that the BZA modify the speaking time limitations to allow the principals five minutes and the individual speakers two minutes based on the large number of speakers. Mr. Kelley seconded the motion which carried by a vote of 7-0.

Jane W. Gwinn, Zoning Administrator, said the appeal dealt with administering and enforcing the Zoning Ordinance regarding the meaning of Condition Number 14 of SE 90-M-005. She referenced the background of the property as outlined in the memorandum to the BZA dated June 11, 1996, which stated that the property was originally developed as a nursing home pursuant to a special permit granted by the BZA in 1966. In 1970, the BZA approved a special permit amendment to allow part of the facility to be used for psychiatric purposes and the approval had several conditions one of which said no violent patients shall be admitted. In 1990, there was a subsequent amendment, and by that time under the Zoning Ordinance this use was a special exception use, which was approved by the Board of Supervisors and allowed the total conversion of this facility to a psychiatric facility. Ms. Gwinn said the approval continued Condition Number 14 relating to violent patients and expanded the wording of the Condition. In 1995, Supervisor Trapnell expressed concern that the hospital was not operating in conformance with the special exception conditions and requested an interpretation. She recommended a clarification of paragraphs 2 and 3 of her determination and concluded by stating she believed her determination was consistent with the intent of the Condition as approved by the Board of Supervisors and that such determination was within the authority and responsibility of the Zoning Administrator set forth in the Zoning Ordinance and the Code of Virginia.

The appellant's attorney, Richard Hobson, with the firm of McGuire, Woods, Battle & Boothe, L.L.P., asked if he had understood correctly that his time limit was five minutes as opposed to ten minutes. Chairman DiGiulian said that was correct.

Mr. Hobson said copies of his presentation and a written statement by Barbara Hekimian, Chief Operating Officer of Dominion Hospital, had been submitted to the Clerk in addition to a legal memorandum, relative legal provisions, a sketch of the interior of the hospital, and 62 letters in support of the hospital's position. He said the appeal was filed based on the Zoning Administrator's written determination and that the hospital asserted that the Zoning Administrator did not have the authority to make a binding determination of a special exception condition imposed by the Board of Supervisors. Mr. Hobson also believed that, if the Zoning Administrator did have that authority, this particular determination goes beyond defining the term "violent patient" and amends or modifies and expands that condition thereby exercising authority which the Zoning Administrator clearly does not have. He said the hospital acknowledges that neighborhood representatives feel threatened by the prospect of being physically harmed by a violent patient who leaves the hospital without permission and consequently the hospital acknowledges the need to clarify the definition of "violent patient" by perhaps including additional conditions which reassure residents that they are not threatened by physical harm. Mr. Hobson said the hospital has filed a special exception application attempting to clarify the definition but added that the hospital has clearly stated that it was not waiving its rights to the existing special exception or any of the issues presented by the appeal.

Ms. Hekimian said the hospital is very safe and over the 26-years that psychiatric patients have been treated at the hospital there has never been an instance where a patient has left the hospital and done harm to anyone in the neighborhood. She acknowledged that there have been events where patients have left the hospital without authorization and she cited two such incidents. Ms. Hekimian said the hospital was a good, safe facility and they want to work with the neighbors to resolve all the issues.

Mr. Hobson said he believed the special exception process would address the concerns of the neighborhood and rights of the hospital. He said the BZA does not have the right or authority to impose new conditions. Mr. Hobson said the BZA's decision will not settle the matter nor will a court decision as the court cannot impose entirely new conditions. He said, because of the substantial question raised by the appeal as to the authority of the Zoning Administrator, any decision even if arrived at by substantial agreement by the community and the appellant would still be subject to challenge by any interested party. Mr. Hobson said only the legislative body may amend conditions or specify new ones and asked that the BZA overrule the Zoning Administrator or defer decision to allow the legislative process to proceed.

Mr. Ribble said he had understood the speaker to say that the BZA's decision would not make any difference and said if that were true why had they filed the appeal. Mr. Hobson said, in his opinion, it would not settle the controversy and noted that the issue before the BZA was limited and at the time the appeal was filed the Zoning Administrator was in agreement that the special exception process was the proper procedure. He added that if the BZA ruled in favor of the Zoning Administrator it was clear that there would be a legal confrontation.

Chairman DiGiulian said the question had been raised by a citizen as to whom the principals were who would be given five minutes to speak. He said it was his understanding that the intent of the motion was to allow only Ms. Gwinn and Mr. Hobson five minutes. Mr. Hammack said that was correct.

The following speakers spoke in support of the appellant: Dr. Joseph Palombi, an attending psychiatrist at Dominion Hospital; Dr. David Daniel, 6404-P Sevens Corner Park, Falls Church, Virginia; and, Dr. David Frenkel, 6073 Arlington Boulevard, Falls Church, Virginia; and Lisa Lubeck (no address given). They spoke about the safety of the hospital and the good work it does.

Mr. McPherson asked one of the speakers if the hospital does or does not treat violent patients. Dr. Palombi said there are patients who are potentially violent, but whether they actually do become violent he believed was often the issue.

The following spoke in support of the Zoning Administrator: Mary Northrup, 6429 Ichabod Place, Falls Church, Virginia, Chairman of the Advisory Board; Arlene Whitten, 3015 Aspen Lane, Falls Church, Virginia, Chairman, Mason District Council of Civic Association; Edward J. Brazill, 1911 Youngblood Street, McLean, Virginia, President of the Northern Virginia Alliance for the Mentally Ill; Jeff Dender, 3015 Seven Oaks Place, Falls Church, Virginia, President of the Seven Oaks Civic Association; John Olsen, 6301 Crooked Oak Lane, Falls Church, President of the Seven Oaks II Civic Association; Chadwick R. Gore, 3014 Castle Road, Falls Church, Virginia, President of the Buffalo Hills Civic Association; Jane Harvey, 3129 Sleepy Hollow Road, Falls Church, Virginia; Bill Burrow, 3208 Juniper Lane, Falls Church, Virginia, President of the Ravenswood Civic Association; Christine R. Trapnell, 3416 Juniper Lane, Falls Church, Virginia, former Supervisor for Mason District, spoke on her behalf and read a prepared statement into the record on behalf of Thomas M. Davis, Member of U.S. Congress, 11th District ; Bill Whitacre, 3017 Seven Oaks Place, Falls Church, Virginia; Ray Friday, 3126 Valley Lane, Falls Church, Virginia, President of the Sleepy Hollow Manor Civic Association; Bob Daugherty, 6425 Ichabod Place, Falls Church, Virginia; Shirley Fegan, 4715 Declaration Court, Annandale, Virginia, Director of the Congressional Schools of Virginia; James E. Chapman, 3023 Castle Road, Falls Church, Virginia; Anne Pendleton, 3028 Knoll Drive, Falls Church, Virginia, President Sleepy Hollow Civic Association; Ed Ruggiero, 3211 Patrick Henry Drive, Falls Church, Virginia; Bob Hull, Delegate of Virginia Legislature; Roger Hoskin, 6211 Cheryl Drive, Falls Church, Virginia, President of the Ravenwood Park Civic Association; Janice Gaynor, 6509 Valley Court, Falls Church, Virginia; and, James Hill.

The speakers said the special exception precludes the hospital from treating violent patients and discussed the hospital's failure to cooperate with the neighborhood and address their concerns, in

particular the lack of security. They also believed the hospital needs to be held accountable for their failure to comply with the development conditions of the special exception. The speakers cited various incidents that members of the community have witnessed while individuals are being transported to the hospital. They provided a video tape of a news report for the BZA's viewing of a man who was treated at Dominion Hospital after he had been arrested by the police for threatening President Clinton. A petition with approximately 400 signatures and photographs of the hospital were submitted to the BZA. Copies of the speakers' prepared statements that were submitted to the BZA are contained in the file.

In closing remarks, Ms. Gwinn reiterated her earlier remarks and said the BZA does have the authority to uphold, reverse, or modify a determination on appeal.

A discussion took place between Mr. McPherson and Ms. Gwinn regarding the enforceability of Condition Number 14.

In rebuttal, Mr. Hobson agreed that a clarification of Condition Number 14 was needed and that he believed the special exception process would do so. He pointed out that over the time the hospital has been operating there has been no incident when a neighbor was harmed. Mr. Hobson said he did not believe the Zoning Administrator had the authority to make a determination regarding a special exception condition. He said it would take a lot of work by all involved parties to resolve issues.

Ms. Hekimian asked the people in the audience to stand who were supporting Dominion Hospital and they did so. She addressed some of the concerns regarding the lack of safety brought out by the speakers.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he had read the positions of both parties and that he agreed with the hospital that the Zoning Administrator did not have the authority to make this kind of interpretation. He said that he would not say that in every case the Zoning Administrator does not have the right to interpret certain conditions but this is a development condition which on its face says certain things with respect to patients. Mr. Hammack said the condition might not be what the public wants and it might not have been the optimum development condition when it was adopted by the Board of Supervisors in 1989, but after reviewing the interpretation he believed it went beyond what he believed to be the intent of Condition Number 14. He added that he was particularly troubled with subparagraphs 4 and 5 and to his way of thinking that was not a normal definition of violent. Although he believed parts of the Zoning Administrator's interpretation was reasonable, it went far beyond what the Board of Supervisors adopted in 1989. Mr. Hammack expressed concern with the language in Section 9-004, Subparagraph 2 of the Ordinance regarding modifications to a special exception. He said although, the Zoning Administrator did a commendable job in trying to find middle ground, he would make a motion to overrule the determination. Mr. McPherson seconded the motion.

Mr. Pammel said he would not support the motion although he did agree that some of the issues covered in the interpretation by the Zoning Administrator might possibly have gone too far. He read a portion of Section 15.1-492 from the Code of Virginia regarding the Zoning Administrator's authority.

Chairman DiGiulian called for the vote which failed by a vote of 2-4 with Mr. Hammack and Mr. McPherson voting aye; Chairman DiGiulian, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting nay. Mr. Dively was not present for the vote. The motion failed for the lack of four votes which is necessary to overrule the Zoning Administrator.

Mr. Pammel made a motion to uphold the Zoning Administrator with regard to A 96-M-010. Mr. Kelley seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting aye; Mr. Hammack and Mr. McPherson voting nay.

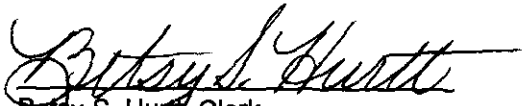
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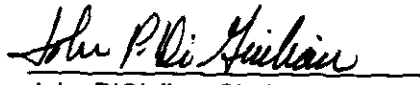
Page 671, June 18, 1996, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:12 p.m.

Minutes by: Betsy S. Hurtt

Approved on: August 6, 1996


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 25, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel; Timothy McPherson and John Ribble were absent.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 072, June 25, 1996, (Tape 1), Scheduled case of:

9:00 A.M. THE LANGLEY SCHOOL, VCA 90-D-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 90-D-056 to permit existing building to remain 10.1 ft. and accessory structure to remain 24.4 ft. from front lot line and parking spaces to remain 8.8 ft. from front lot line. Located at 1411 Balls Hill Rd. on approx. 36,267 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((1)) 43. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Jonathan Rak, Hazel and Thomas, P.C., replied that it was.

Phyllis Wilson, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report dated June 18, 1996. Ms. Wilson noted that the variance amendment application was proposed in order to correct measurements and to include additional measurements not on the plat from the previous variance approval. The applicant requested a variance of 19.9 feet to the minimum front yard requirement for an existing building, 5.6 feet to the minimum front yard requirement for an existing garage, and 1.2 feet to the minimum front yard requirement for parking spaces.

Mr. Rak presented the applicant's request as outlined in the statement of justification submitted with the application. Mr. Rak said the reason for the variance amendment request was due to the County requesting the applicants to dedicate additional right-of-way on Balls Hill Road during the review of the site plan, which resulted in the front yard setbacks being further reduced from the original variance approval of 1990. Mr. Rak requested the Board to waive the eight day waiting period if they approved this variance so they could continue with their construction schedule.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VCA 90-D-056 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996. The Board also waived the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VCA 90-D-056 by THE LANGLEY SCHOOL, under Section 18-401 of the Zoning Ordinance to amend VC 90-D-056 to permit existing building to remain 10.1 feet and accessory structure to remain 24.4 feet from front lot and parking spaces to remain 8.8 feet from front lot line, on property located at 1411 Balls Hill Road, Tax Map Reference 30-1 ((1)) 43, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 36,267 square feet.
4. The applicant met the nine required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the existing Administration Building and the existing bus garage building shown on the plat prepared by Christopher Consultants Ltd. dated March, 13, 1996, submitted with this application and is not transferable to other land.

This approval*, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable Ordinance regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

Page 674, June 25, 1996, (Tape 1), THE LANGLEY SCHOOL, VCA 90-D-056, continued from Page 673

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 674, June 25, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. & NANCY R. HOWREN, VC 96-V-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1953 Shiver Dr. on approx. 30,730 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Thomas Kerns, Kerns Group Architects, P.C., replied that it was.

Jane Kelsey, Chief, Special Permits and Variance Branch, made staff's presentation as contained in the staff report prepared by Lori Greenlief dated June 18, 1996. The applicant requested a variance of 2.0 feet to the minimum side yard requirement for an addition.

Mr. Kerns presented the applicant's request as outlined in the statement of justification submitted with the application.

In response to questions from Mr. Hammack, Mr. Kerns said that the addition would be a one story garage.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-V-045 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-V-045 by JAMES H. AND NANCY R. HOWREN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.0 feet from side lot line, on property located at 1953 Shiver Drive, Tax Map Reference 93-3 ((24)) 10, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 30,730 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is exceptionally narrow.
6. The lot has exceptional topographic conditions.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (garage) shown on the plat prepared by Kerns Group Architects, P.C., dated January 3, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

Page 676, June 25, 1996, (Tape 1), JAMES H. & NANCY R. HOWREN, VC 96-V-045, continued from Page 675

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 676, June 25, 1996, (Tape 1), Scheduled case of:

9:00 A.M. JAVAD & MARCELLE HABIBION, VC 96-B-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 10032 Glenmere Rd. on approx. 23,033 sq. ft. of land zoned R-1. Braddock District. Tax Map 68-2 ((2)) 17. (MOVED FROM 6/11/96)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marcelle Habibion, 10032 Glenmere Road, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated June 18, 1996. The applicant requested a variance of 12.2 feet to the minimum side yard requirement for an addition.

Ms. Habibion presented her request as outlined in the statement of justification submitted with the application. Ms. Habibion stated that she was requesting an addition to the first floor in order to have a small living room and sitting room area for her mother.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 96-B-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996.

Chairman DiGiulian called for a discussion.

Mr. Pammel noted that the development of this home was built under what would now be the R-2 District standards but it was in an R-1 District.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-B-047 by JAVAD AND MARCELLE HABIBION, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.8 feet from side lot line, on property located at 10032 Glenmere Road, Tax Map Reference 68-2 ((2)) 17, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 23,033 square feet.

4. The applicant met the nine required standards for a variance.
5. The lot is exceptionally narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Rice Associates, P.C., dated February 20, 1996, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction, and final inspections shall be approved.
3. If the addition is to be used as an accessory dwelling unit, approval of this use shall be obtained prior to issuance of the building permit.
4. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

Page 678, June 25, 1996, (Tape 1), JAVAD & MARCELLE HABIBION, VC 96-B-047, continued from Page 677

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 678, June 25, 1996, (Tape 1), Scheduled case of:

9:00 A.M. TERRANCE D. & JANE G. WHARTON, VC 96-S-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.2 ft. from rear lot line. Located at 5934 Innisvale Dr. on approx. 30,933 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((6)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Terrance D. Wharton, 5934 Innisvale Drive, Fairfax Station, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated June 18, 1996. The applicant requested a variance of 9.8 feet to the minimum rear yard requirement for an addition.

Mr. Wharton presented his request as outlined in the statement of justification submitted with the application. Mr. Wharton added that he had talked to the adjacent property owners and the neighborhood association and they had no objections to his variance request.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 96-S-039 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-039 by TERRANCE D. AND JANE G. WHARTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.2 feet from rear lot line, on property located at 5934 Innisvale Drive, Tax Map Reference 76-2 ((6)) 28, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.

3. The area of the lot is 30,933 square feet.
4. The house is set back on the lot.
5. The lot is shallow.
6. There is no other location on the lot to put the addition due to a septic field being located on the other side of the lot.
7. The lot backs up to heavily wooded park land; therefore, the variance request would not affect other homeowners.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the family room addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 28, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOSEPH L. ROSSO, VC 96-D-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. from side lot line. Located at 1450 Spring Vale Ave. on approx. 11,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (7) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph L. Rosso, 1450 Spring Vale Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated June 18, 1996. The applicant requested a variance of 7.5 feet to the minimum side yard requirement for an addition.

Mr. Rosso presented his request as outlined in the statement of justification submitted with the application.

In response to a question from Mr. Hammack, Mr. Rosso explained that the length of the garage would actually be 20 feet and the additional 10 feet would be for the screened in porch.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-D-044 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-D-044 by JOSEPH L. ROSSO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.5 feet from side lot line, on property located at 1450 Spring Vale Avenue, Tax Map Reference 30-2 ((7)) (7) 15, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,250 square feet.
4. The applicant met the nine required standards for a variance.
5. The granting of the variance will not change the character of the zoning district.
6. The maker of the motion had reservations in reference to 30 feet of construction being 4.5 feet from the side lot line; however, the last 10 feet will be a screened porch.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the garage and screen porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated March 15, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DIANE NASH HENDRICKS, VC 96-L-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 6311 Pioneer Dr. on approx. 9,120 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (5) 6. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diane Nash Hendricks, 6311 Pioneer Drive, Springfield, Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as contained in the staff report dated June 18, 1996. The applicant requested a variance of 4.5 feet to the minimum side yard requirement for an addition.

Ms. Hendricks presented her request as outlined in the statement of justification submitted with the application stating that her house had been destroyed by a fire that started in the carport. Ms. Hendricks noted that she was not requesting an addition for a garage, as shown in the staff report, instead she wanted to extend the house for additional living space area and that she would never again have vehicles in her dwelling. Ms. Hendricks also requested the Board to waive the eight day waiting period if the variance was granted.

In response to questions from the Board, Ms. Hendricks stated that the requested addition would not go any further out than the already existing concrete slab.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 96-L-071 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 18, 1996 with the change to the Development Conditions to state "addition" and remove the word "garage". The Board also waived the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-L-071 by DIANE NASH HENDRICKS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.5 feet from side lot line, on property located at 6311 Pioneer Drive, Tax Map Reference 80-4 ((5)) (5) 6, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4 and HC.
3. The area of the lot is 9,120 square feet.
4. The applicant met the nine required standards for a variance.
5. The addition will be no closer than the present concrete slab that was formerly used for a carport.
6. This is an enclosure of a carport to provide additional living space within the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of addition shown on the plat prepared by Colburn and Associates, Inc., dated August 24, 1993, signed August 25, 1993, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 1996. The Board of Zoning Appeals waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 684, June 25, 1996, (Tape 1), Scheduled case of:

- 9:00 A.M. MILDRED T. MILLER, VC 96-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot lines, deck 7.0 ft., chimney 5.0 ft. and roofed deck 7.0 ft. from side lot line. Located at 2306 Arden St. on approx. 11,033 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 55. (DEF. FROM 5/28/96 at PLANNING COMMISSION'S REQUEST.)
- 9:00 A.M. MILDRED T. MILLER, VC 96-P-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot line and 20.0 ft. from rear lot line, deck 7.0 ft. and chimney 5.0 ft. from side lot line and roofed deck 20.0 ft. from rear lot line. Located at 2302 and 2304 Arden St. on approx. 16,084 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 57 and 58A. (DEF. FROM 5/28/96 at PLANNING COMMISSION'S REQUEST.)
- 9:00 A.M. MILDRED T. MILLER, VC 96-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. from side lot lines, deck 7.0 ft., chimney 5.0 ft. and roofed deck 7.0 ft. from side lot line. Located at 2308 Arden St. on approx. 11,044 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 56. DEF. FROM 5/28/96 at PLANNING COMMISSION'S REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Paul Jeanin, Land Design Consultants, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated May 21, 1996 and the Addendum dated June 7, 1996, prepared by Lori Greenlief. Ms. Kelsey noted that in the addendum to the staff report there was a computer error concerning the date the applicant purchased the lots, the correction should reflect that the applicant had owned the lots since 1940. Ms. Kelsey also advised the Board that the Planning Commission heard this application on June 12, 1996 and referenced a memo dated June 13, 1996 from the Commission stating that they recommended approval of variances which would allow construction of two dwellings rather than three on the subject properties.

With respect to VC 96-P-032, the applicant requested variances of 13.0 feet to the minimum side yard requirement for a dwelling, 8.0 feet to the minimum side yard requirement for a deck, 12.0 feet to the minimum side yard requirement for a chimney, and 13.0 feet to the minimum side yard requirement for a roofed deck. For further details of the variances see pages 1 and 2 of the staff report.

With respect to VC 96-P-033, the applicant requested a variance of 13.0 feet to the minimum side yard requirement for a dwelling, 5.0 feet to the minimum rear yard requirement for a dwelling, 8.0 feet to the minimum side yard requirement for a deck, 12.0 feet to the minimum side yard requirement for a chimney, and 5.0 feet to the minimum rear yard requirement for a roofed deck. For further details on the variances see pages 1 and 2 of the staff report.

With respect to VC 96-P-034, the applicant requested a variance of 13.0 feet to the minimum side yard requirement for a dwelling, 8.0 feet to the minimum side yard requirement for a deck, 12.0 feet to the minimum side yard requirement for a chimney, and 13.0 feet to the minimum side yard requirement for a roofed deck. For further details on the variances see pages 1 and 2 of the staff report.

Mr. Jeanin presented the applicant's request as outlined in the statement of justification submitted with the application. He said the lots were recorded prior to the Zoning Ordinance in 1941; therefore, they are existing lots of record and could be built upon by right. However, because of the exceptional narrowness of the lots, they would be forced to build too narrow a house by today's standards. Mr. Jeanin felt that the lots were in conformance and compatible to the adjacent Chatham Square Community because Chatham Square was recently approved for a PDH-4 development that permitted side setbacks of 4.0 feet between dwellings and the applicant's proposed dwellings would be 7.0 feet.

The following spoke in opposition. Christopher Phillip Wrist, 2305 Yvonne Way, Dunn Loring, Virginia, President of Chatham Square Homeowners Association. Mr. Wrist referenced a fence, that surrounded the perimeter of the community, and a line of mature trees located between the Chatham Square Community and the proposed dwellings. He said the trees established a natural boundary between the neighborhood and adjacent area that was not a part of their community. Mr. Wrist said they were concerned that the large developed mature trees were going to be taken down along with the chain link fence thereby eliminating the boundary, changing the aesthetics and the security of their neighborhood.

In rebuttal, Mr. Jeanin said that in regard to the density issue, Chatham Square was approximately 3.8 dwelling units per acre and the applicant's proposed dwellings were approximately 3.4 dwelling units per acre; therefore he felt they were compatible in terms of open space. He stated that the trees along the proposed dwellings had been surveyed and provisions had been made to save as many as possible. Mr. Jeanin said the proposed dwellings were going to be architecturally compatible with the Chatham Square Community.

Chairman DiGiulian closed the public hearing.

Mr. Pammel discussed with staff how they had evaluated what the proper density was for the proposed dwellings. Ms. Kelsey said the application was evaluated against the density required by the Comprehensive Plan Map which was 2 to 3 dwelling units per acre.

Mr. Kelley moved to grant VC 96-P-032 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 21, 1996.

Chairman DiGiulian called for a discussion.

Mr. Pammel stated that he normally does not support variances to achieve what was being done here, but he felt this was an unusual situation. He said the lots being created were clearly consistent with the development that had taken place in the area and although his preference would be that they do this through a rezoning application, that could be burdensome; therefore, he would support the motion.

Mr. Hammack stated that the density was probably appropriate for the four lots. However, he did not like the way Lot 58A and Lot 57 were treated on this proposal and he thought it would be more appropriate if the property were rezoned or reconfigured to accomplish goals of a better layout of development. He stated that he was going to oppose the motion.

Chairman DiGiulian stated that he was going to support the motion because he could not see any other way you could lay it out differently and still obtain three build able lots.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-032 by MILDRED T. MILLER, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 feet from side lot lines, deck 7.0 feet, chimney 5.0 feet and roofed deck 7.0 feet from side lot line, on property located at 2306 Arden Street, Tax Map Reference 39-4 ((1)) 55, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 11,033 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is exceptionally narrow.
6. The requested variance will be compatible with the other dwellings in the immediate vicinity.
7. The applicant should not be penalized for being one owner of four properties.
8. The applicant has owned these properties for over 55 years.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling, deck, chimney and roofed deck shown on the plat prepared by Land Design Consultants, dated February, 1996, signed March 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-1, with Mr. Hammack voting nay. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to grant VC 96-P-033 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 21, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-033 by MILDRED T. MILLER, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 feet from side lot line and 20.0 feet from rear lot line, deck 7.0 feet and chimney 5.0 feet from side lot line and roofed deck 20.0 feet from rear lot line, on property located at 2302 and 2304 Arden Street, Tax Map Reference 39-4 ((1)) 57 and 58A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 16,084 square feet.
4. The applicant met the nine required standards for a variance.

5. The lot is exceptionally narrow.
6. The requested variance will be compatible with the other dwellings in the immediate vicinity.
7. The applicant should not be penalized for being one owner of four properties.
8. The applicant has owned these properties for over 55 years.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling, deck, chimney and roofed deck shown on the plat prepared by Land Design Consultants, dated February, 1996, signed March 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 689, June 25, 1996, (Tape 1), MILDRED T. MILLER, VC 96-P-032, VC 96-P-033, and VC 96-P-034, continued from Page 688)

Mr. Dively seconded the motion which carried by a vote of 4-1, with Mr. Hammack voting nay. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to grant VC 96-P-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 21, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-034 by MILDRED T. MILLER, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 feet from side lot lines, deck 7.0 feet, chimney 5.0 feet and roofed deck 7.0 feet from side lot line, on property located at 2308 Arden Street, Tax Map Reference 39-4 ((1)) 56, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 11,044 square feet.
4. The applicant met the nine required standards for a variance.
5. The lot is exceptionally narrow.
6. The requested variance will be compatible with the other dwellings in the immediate vicinity.
7. The applicant should not be penalized for being one owner of four properties.
8. The applicant has owned these properties for over 55 years.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling, deck, chimney, and roofed deck shown on the plat prepared by Land Design Consultants, dated February, 1996, signed March 5, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-1, with Mr. Hammack voting nay. Mr. Ribble and Mr. McPherson were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 690, June 25, 1996, (Tape 1), Scheduled case of:

9:30 A.M. CAPELLI HAIR, SKIN & NAILS, SP 96-M-010 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a massage parlor. Located at 6112 Arlington Blvd. on approx. 10.62 ac. of land zoned C-7 and SC. Mason District. Tax Map 51-4 ((1)) 2B. (OUT OF TURN HEARING GRANTED FOR 5/21/96. NOTICES NOT IN ORDER. DEF. FROM 5/21/96 FOR NOTICES).

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the applicant did not have notices in order and referred to a memorandum dated June 17, 1996 from Teresa M. Wang, Deputy Clerk to the Board of Zoning Appeals explaining that staff had tried to assist the applicant, but the notices had not been returned to the BZA Clerk in sufficient time to send out new notices to the correct property owners.

Page 691, June 25, 1996, (Tape 1), CAPELLI HAIR, SKIN & NAILS, SP 96-M-010, continued from Page 690

The applicant, Lucia Burgess, 6112 Arlington Boulevard, Falls Church, Virginia, explained to the Board why she believed her notices were not in order.

In response to questions from the Board, staff suggested a hearing date of August 13, 1996.

Mr. Dively made a motion to defer this hearing to August 13, 1996 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting. Ms. Kelsey said the Clerk would continue to work with the applicant but stressed that the Notices must be returned to the Clerk before the deadline.

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Page 691, June 25, 1996, (Tape 1 & 2), Scheduled case of:

9:30 A.M. GERALD W. AND SANDRA M. EMERSON, Appeal 96-V-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a vehicle light service establishment in an R-3 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8633 Plymouth Rd. on approx. 20,999 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((3)) 43.

The appellants' agent, Harry P. Hart, Hart and Calley, requested that this case be deferred to a time when all the members of the Board of Zoning Appeals could be present.

Mr. Shoup said he saw no reason why the case could not go forward today. He said because this was an on going violation he could not support the deferral request.

Chairman DiGiulian called for speakers to the deferral request.

The following spoke in opposition to the deferral request. Raymond Bisserell, 8634 Winthrop Drive; Dianne Sheppard, 8629 Plymouth Road; Joyce Detwiler, 8625 Plymouth Road; Susan Bisserell, 8634 Winthrop Drive. They felt the hearing should go forward today because there were enough BZA members present for a quorum and were concerned that the hearing could be postponed to a date they would not be able to make or would have to take additional time off from work.

Chairman DiGiulian stated that it is not the BZA's policy to defer a case based on a full Board not being present since that could occur the at any time and a quorum was present. Mr. Dively made a motion to deny the request for a deferral because he felt it would be bad policy for the BZA to defer a hearing just because all the members were not present.

Mr. Kelley stated that he agreed with the motion but was also troubled by the fact that an appeal required the appellant to get four votes as opposed to a majority.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. McPherson and Mr. Ribble were absent from the meeting.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated June 18, 1996. Mr. Shoup said that at issue was the appellant's operation of a vehicle repair business at a residentially zoned property. It was determined that the repair operation was light vehicle repairs, no major mechanical or body work was being done on site. Mr. Shoup said that the issue was whether the appellants had grand fathered rights to continue the repair activity. He said the appellant had represented that he and his father before him had operated a vehicle repair business from this property since 1949. As noted in the staff report, the business would had to have existed prior to the Zoning Ordinance in 1941 in order to be considered a lawful nonconforming use. Mr. Shoup said there was no evidence to suggest that was the case and the appellant asserts that the family did not move there until 1949. Mr. Shoup said it was staff's position that the use did not satisfy the criteria set forth in the Zoning Ordinance to be considered a lawful nonconforming use and was, therefore, in violation. Mr. Shoup also noted that even if you could get beyond the question of a nonconforming use, it was jeopardized by the

Page 692, June 25, 1996, (Tape 1 & 2), GERALD W. AND SANDRA M. EMERSON, Appeal 96-V-012, continued from Page 691)

appellant enlarging his garage to be used as part of the business, because you cannot enlarge a grand fathered use.

Mr. Hart presented the arguments forming the basis for the appeal. Their position was that this had been a valid nonconforming use as a home occupation for at least forty-seven years and may have been prior to 1949, but that they had no facts to support anything prior to that time. Mr. Hart pointed out an inaccuracy in the staff report, he said that Mr. Emerson had informed the Zoning Enforcement investigator that there were occasions when he would perform major mechanical work.

In response to questions from the Board, Mr. Hart stated that he did not agree with the legal issue. Their position was that this business could have been started as a home occupation in 1949.

Mr. Shoup said he did not believe that this type of use could have been conducted as a home occupation in 1949 because no commercial repair work was allowed with a garage on the property and no display was allowed from the exterior of the building that showed a business was being operated there according to the Zoning Ordinance at that time. He felt that given the way the business was operated today, that standard was not being met. There were vehicles being parked on the property awaiting repair, people coming to and from the property, tow trucks would occasionally tow a vehicle there to be worked on and repairs take place outdoors in the driveway. Mr. Shoup said that when you combine all the provisions of the 1949 Zoning Ordinance, you can not get to the conclusion that a vehicle repair establishment would have been permitted as a customary home occupation.

In response to questions from Mr. Dively, Mr. Hart said his position was that in 1949 what the appellants were doing was legal. Mr. Hart said it was their belief that the definition of home occupation had grown more narrow over the years. In 1949, you could have a home occupation as long as you did not have exterior signs that indicated a business was being operated.

The following spoke in support of the appellants' position. Norma Miller, 8632 Plymouth Road; Harvey Tomkins, 1206 LaSalle Lane; John Hayes, 8708 Plymouth Road; Neil Hughes, 8628 Plymouth Road; T.C. Pickney, 8601 Buckboard Drive; and, Chuck Snyder. They felt the complaints were exaggerated and the appellants should be allowed to continue their business because they were an asset to the community. They felt the business had not adversely affected property values and they never saw any advertisements nor signs posted that indicated a business was being operated there.

In response to questions from Mr. Hammack, Mr. Shoup said that back in 1949 you were not required to have a permit for a nonconforming home occupation use and if the Zoning Administrator's determination was reversed by the BZA the appellant would be able to continue without a permit; however, he would be limited to the extent that he operated. Mr. Shoup added that if the appellant enlarged his business he would negate his nonconforming right.

Mr. Hart submitted two letters from neighbors, Nancy Hindman and Sara Kay Addis, in support of the appellant's position. He also submitted photographs of the appellants property to the Board.

The following came forward in support of the Zoning Administrator's position. Raymond Bisserell, 8634 Winthrop Drive; Dianne Sheppard, 8629 Plymouth Road; and, Joyce Detwiler, 8625 Plymouth Road. They felt the business did not belong in a neighborhood because it generated loud noises and has grown; therefore, it needed to be relocated to a more appropriate area. Photographs were submitted depicting several vehicles parked in front of the appellants' house awaiting repair and three letters in opposition were also submitted from area residents.

In rebuttal, the appellant, Gerald Emerson, 8633 Plymouth Road, addressed the Board. He stated that he had moved there in 1949 and his father had operated an auto repair business in Alexandria as well as out of the house. He said the business was not always a full time operation, that it became one in 1988 when he retired from his last job.

In response to questions from Mr. Hammack, Mr. Emerson said in 1969 his father retired and moved out of the area, so he took over the home business at that time. Mr. Emerson stated that he always had a full

time job in addition to the auto repairs shop he operated at his house until 1988, when he retired and started operating the business full time. Mr. Emerson said he was told by county staff he did not need a business license in order to operate since it was not a large scale business.

In rebuttal, Mr. Shoup said the previous testimony showed that the circumstances may have changed over the years with the auto repair business; however, it clearly was a commercial operation and did not satisfy the criteria to be considered a legal nonconforming use. He felt the construction of a two car garage in 1988 to be used for the business can not acquire nonconforming rights from back to 1949.

Mr. Kelley asked staff if the appellant would be required to have any type of license if he had a legal nonconforming use. Mr. Shoup said he would not be required to have any kind of a zoning permit; however, in terms of a business license, he may need one to operate out of his home.

Mr. Hart reiterated that the appellant's wanted to be legal in every way. He said Mr. Emerson had never been advised that he needed a business license but if that was a county requirement, he would obtain one.

Mr. Kelley discussed with Mr. Hart whether the appellant had operated the repair business since 1969 continuously after his father retired.

In response to a question from Mr. Hammack, Mr. Hart said the repair business was now the appellants sole source of income; therefore, he had increased his hours of operation.

Chairman DiGiulian said he questioned that if this business existed for forty seven years, at what point does a citizen feel it was his right that what he was doing was legal. He was concerned over the fact that apparently there had been no complaints to the Zoning Enforcement Office for forty seven years and now all of a sudden the appellants are in violation.

The public hearing was closed. Mr. Dively made a motion to reverse the Zoning Administrator for the following reasons. He felt that this had been a continuing use since 1949 and while it may have gone down a little bit and then back up, it seemed to have been a continuous use. Mr. Dively said the BZA was here in a judicial mode, interpreting a Zoning Ordinance from 1941 and he felt the appellants fell under the home occupation use since 1949. He said the testimony from the people opposed to this use has helped the appellants because they went there, looked at it, and they did not know this use was occurring. Furthermore, there were no signs nor any type of a display indicating a business was being operated, which was a requirement. Mr. Dively stated that he felt this use was grand fathered and appropriate.

Mr. Kelley seconded the motion and added that he felt equity was clearly an issue and that the BZA needed to take that into consideration. Mr. Kelley said the appellants had the business running for forty seven years and while it has had its peaks and valleys, he felt it had been running continuously over that time.

Mr. Pammel stated that he could not support the motion because he did not feel the business was operated continuously since 1949. He also felt the appellant had not established the burden of proof that this was a home occupation as prescribed by the Zoning Ordinance of the 1941 version; nor, had the appellants established the fact that this was a nonconforming and consistent activity. Mr. Pammel said they had evidence that there was a car repair business taking place but it was operated at different times and places.

Mr. Hammack said he agreed with Mr. Pammel's comments and would not support the motion. Mr. Hammack also added that if there was a valid home occupation, which he did not believe, he thought there was also an enlargement to the business that took place in 1988, which would require the appellant to be brought back into conformance and to come before the BZA with the request. He said he also had some reservations about whether it was established as a valid home occupation in 1949 because most home occupations were intended to be run out of the home, and garages or accessory buildings were not usually considered a part of the home occupation itself. Mr. Hammack said he also considered the fact that the appellant's father had another full time service station and may or may not have charged for

Page 694, June 25, 1996, (Tape 1 & 2), GERALD W. AND SANDRA M. EMERSON, Appeal 96-V-012, continued from Page 693)

repairs done at home. When the appellants father retired in 1969, there was a big gap between 1969 and 1989 when the appellant enlarged the business. Mr. Hammack said he did not think the appellant had shown he was in compliance and felt the Zoning Administrator's determination was right. He felt equity was not a factor in this kind of an issue and even though he was sympathetic with the appellant to some extent, there was no statute of limitations on the Zoning Ordinance and it happens all over the state, as areas urbanize, things that were permitted in a rural area at one point in time were no longer acceptable.

The motion to overrule the Zoning Administrator failed by a vote of 3-2, with Chairman DiGiulian, Mr. Dively and Mr. Kelley voting for the motion and Mr. Pammel and Mr. Hammack voting against the motion. Mr. Ribble and Mr. McPherson were absent from the meeting. The Zoning Administrator's determination was upheld due to a lack of four concurring votes of the BZA members to overturn the Zoning Administrator's decision.

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Page 694, June 25, 1996, (Tape 2), Scheduled case of:

Approval of Minutes
from May 14, 1996 hearing

Mr. Pammel said he had a correction to the minutes and asked the Chairman to skip over this item until he could locate it. Chairman DiGiulian concurred.

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Page 694, June 25, 1996, (Tape 2), Scheduled case of:

Acceptance of James Webb Appeal
Memorandum from William Shoup, Deputy Zoning Administrator

William Shoup, Deputy Zoning Administrator, said there was an issue of timeliness regarding the acceptance of the appeal. He referred to his June 14, 1996 memorandum and said there were two notices of violation issued. The first notice was on January 3, 1996, which advised the appellant that he was in violation for depositing soil in a swale. The second notice was a follow-up dated April 25, 1996 which referenced the January 3 notice of violation and stated that the appeal rights had expired. This appeal was filed in response to the April 25, 1996 notice of violation letter. Mr. Shoup said it was staff's opinion that what was being appealed was the original notice of violation from January 3, 1996. He said staff was recommending only the determination that the violation continued could be appealed and the facts on whether or not it constitutes a violation could not because the appellant did not file within the thirty days of the original notice of violation letter. Mr. Shoup said it was staff's recommendation that the appeal be accepted but limit the scope of the appeal to the determination that just the violation continues.

Chairman DiGiulian referenced a letter dated June 14, 1996 from the appellant, Mr. Webb, that stated he wanted the entire appeal heard. Chairman DiGiulian questioned Mr. Shoup if the swale that the appellant referred to was a natural one or created because of the action of the adjacent property owner. Mr. Shoup said the swale on the appellant's property was created when his subdivision was developed.

Mr. Pammel said the letter from the appellant suggested that when the development occurred on the surrounding properties, it was the large developer who turned the water onto him. He said if that was the case, this condition did not exist before that development and he would not be in violation. Mr. Shoup said staff looked at that issue and felt it was not the case.

Chairman DiGiulian said he would like to accept the appeal and reserve decision on whether they limit the scope of the appeal until they have heard testimony from both sides.

Mr. Pammel said that he agreed with Chairman DiGiulian's comments and made a motion to that effect. He added that he would also like to hear some discussion from DEM with reference to whether they made

Page 695, June 25, 1996, (Tape 2), ACCEPTANCE OF JAMES WEBB APPEAL, continued from Page 694

inspections at the end of the project to determine if the drainage was acceptable. The vote was 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting. The appeal was scheduled for October 1, 1996.

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Page 695, June 25, 1996, (Tape 2), Scheduled case of:

Approval of Minutes
from May 14, 1996 hearing

Mr. Pammel noted a spelling correction to the minutes on page nine and moved to approve the minutes which carried by a vote of 5-0. Mr. Ribble and Mr. McPherson were absent from the meeting.

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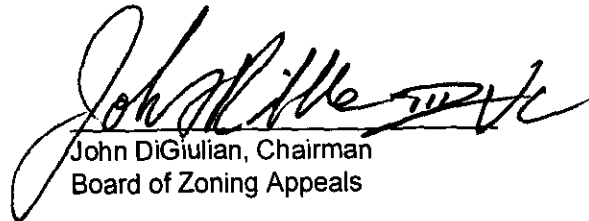
As there was no other business to come before the Board, the meeting was adjourned at 11:21 a.m.

Minutes by: Teresa M. Wang

Approved on: September 10, 1996



Betsy S. Hartt, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 2, 1996. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 196, July 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. BRADLEY R. LINDEN, VC 96-H-051 Appl. under Sect(s).18-401 of the Zoning Ordinance to permit construction of addition 35.6 ft. from front lot line and 10.0 ft. from side lot line. Located at 1716 Beulah Rd. on approx. 33,649 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((5)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bradley R. Linden, the applicant, 1716 Beulah Road, Vienna, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, presented the staff report. She explained that the applicant was requesting a front yard variance of 4.4 feet and a side yard variance of 10 feet to allow a garage addition. Ms. Stagg pointed out that a previous owner of the subject property had obtained approval for a 5-foot extension of the existing carport into the required side yard which placed it 15 feet from the side lot line.

Mr. Linden explained that the site's configuration is extremely narrow, tapering to approximately 90 feet in the front, and that the house's placement, which is at an angle, caused a corner of the unit to encroach somewhat on the setback line. He noted that there was a sharp falloff on the portion of the yard which they proposed to build the garage which affected a distinct sight separation between him and his next door neighbor. Mr. Linden informed the Board that he had planted trees over the years which produced a much appreciated and substantial buffer between his and his neighbors' properties and he maintained that there would be no tree removal in constructing the garage. He said that the small size of the current garage rendered it impractical because the cars would literally hang out so he was requesting this variance to make the garage useable. In response to Mr. Hammack's question, he explained that they intended to extend a second floor above the current floor plan while constructing the garage. When complimented by Mr. Hammack on the plan's proposed elevation, Mr. Linden said that both he and his wife were architects and had collaborated on their design.

Chairman DiGiulian called for speakers either in support or in opposition.

Speaking in support, Stephen A. Yoshar, 1708 Beulah Road, Vienna, said that he believed the construction would be an improvement to the neighborhood. Mr. Yoshar's concern was the fact that Beulah Road was heavily traveled and he questioned what the County's setback policy was to assure that there would be ample frontage for Mr. Linden's home. In response to Mr. Yoshar's question, Chairman DiGiulian stated that the County's policy was 38 feet from the center line of a roadway.

There being no further speakers in support and none in opposition, Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 96-H-051 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-H-051 by BRADLEY R. LINDEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 35.6 feet from front lot line and 10.0 feet from side lot line, on property located at 1716 Beulah Road, Tax Map Reference 28-1((5))3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 33,649 square feet.
4. The applicant has satisfied the nine required standards for granting a variance; in particular, this is a large lot zoned R-1 but it is very narrow.
5. There is a septic field immediately behind the house.
6. There are some topographic constraints that justify granting the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

Page 698, July 2, 1996, (Tape 1), BRADLEY R. LINDEN, VC 96-H-051, continued from Page 697

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Paul Luoma, dated February 12, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 698, July 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD R. & SARAH P. SHERWOOD, VC 96-Y-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.4 ft. from side lot line such that side yards total 17.0 ft. Located at 12769 Turberville Ln. on approx. 11,450 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah Sherwood, the applicant, 12769 Turberville Lane, Herndon, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She noted that the applicant was requesting a variance of 1.6 feet from the minimum side yard requirement and a variance of 7 feet from the total side yards.

Ms. Sherwood informed the Board that the lot was pie-shaped, narrowing towards the rear with a Trans-continental pipeline running along the border. She explained that the previous owner had built the porch and that his permit had been incorrect. She stated that she and her husband have lived in the unit for almost ten years with the porch exactly as it currently appeared.

Chairman DiGiulian called for speakers either in support or in opposition but received no response. He then closed the public hearing.

Mr. Pammel moved to grant VC 96-Y-048 for the reasons set forth in the Resolution, subject to the Proposed Development conditions contained in the staff report dated June 25, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-Y-048 by RICHARD R. AND SARAH P. SHERWOOD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.4 feet from side lot line such that side yards total 17.0 feet, on property located at 12769 Turberville Lane, Tax Map Reference 35-2((8))46, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 11,450 square feet.
4. The lot has an unusual configuration as it is a pie-shaped lot.
5. A screened-in porch already exists in the location where the proposed enclosure will occur.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

Page 700, July 2, 1996, (Tape 1), RICHARD R. & SARAH P. SHERWOOD, VC 96-Y-048, continued from Page 699

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition (enclosure of screened porch) shown on the plat prepared by William E. Ramsey, P.C., Land Surveyor, dated April 2, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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Page _____, July 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES E. & MARGARET M. KIEFFER, VC 96-B-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from rear lot line. Located at 4302 S. Valiant Ct. on approx. 12,476 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((7)) 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles E. Kieffer, 4302 South Valiant Court, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She informed the Board that the applicant was requesting a variance to allow construction of a family room addition to be located 23 feet from the rear lot line and as the Zoning Ordinance requires a rear yard of 25 feet on an R-2 lot, the applicant was requesting a two-foot variance. Ms. Langdon clarified that only one lot corner required the variance.

To justify the requested variance, Mr. Kieffer said his plan sought to be architecturally compatible with the neighborhood; that he intended to extend the roof line and; that all the surrounding properties' houses sat closer to his lot line than his proposed addition would. He advised the Board that the greenhouse would be razed during the addition's construction and therefore there would be fewer structures close to his lot line. Mr. Kieffer said that numerous layout possibilities were considered but each was rejected because there were impracticalities to the design or it created negative conditions by requiring the construction of a much more costly two-story addition or would darken the living space area in their basement. Mr. Kieffer maintained that they wanted to follow the existing roof line. He also pointed out that his neighborhood had a precedent for variances. He submitted letters from adjoining neighbors which evidenced that they had no objection to the addition.

Chairman DiGiulian called for speakers either for or against the variance request.

The co-applicant, Margaret Kieffer addressed the Board to further explain the lot's unusual topography pointing out that the house sat at an angle with the driveway facing the east end while the south end of the lot is where they propose to place the addition. She said that, because of the angle of the lot, they would have to build a two-story addition if it had to be placed at the "functional" rear of the house. Mrs. Kieffer reminded the Board that they wished to build only one single story addition.

Chairman DiGiulian called for any further speakers. Receiving no response, he closed the public hearing.

Mr. Ribble moved to grant VC 96-B-049 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-B-049 by CHARLES E. AND MARGARET M. KIEFFER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 23.0 feet from rear lot line, on property located at 4302 South Valiant Court, Tax Map Reference 70-1((7))26, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (Cluster).
3. The area of the lot is 12,476 square feet.
4. The applicant has met the nine required standards for the granting of a variance; in particular, the applicant cited the situation of the house on the lot.
5. The lot is unusually shaped with topographical problems.
6. The addition will be architecturally compatible with the existing house and other houses in the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by Scott Surveys, dated April 3, 1996, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHARLES W. SMITH, VC 96-P-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 4.0 ft. from side lot line and rear lot line. Located at 3312 Brandy Ct. on approx. 10,720 sq. ft. of land zoned R-4. Providence District. Tax Map 60-1 ((16)) 32.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles W. Smith, 3312 Brandy Court, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow construction of a 16-foot high accessory structure, a detached garage, to be located four feet from the side and rear lot lines. Ms. Langdon explained that a minimum side yard of 10 feet and a minimum rear yard of 16 feet is required, therefore variances of 6 feet for the side yard and 12 feet for the rear yard was requested.

Mr. Smith informed the Board that his house sat at an angle on the lot which presented difficulties when trying to build anything. He said he wanted to build a detached garage to be utilized both for storage and for his automobiles and that the location was chosen because all his neighbors' houses did not face that particular corner. He further clarified that the garage would be off by itself and that he strove to minimize the impact on his fairly wooded lot with the proposed location as fewer trees would have to be removed. Mr. Smith stated that the design allowed for easier maneuverability around the carport and into the garage.

Chairman DiGiulian asked if there was anyone present who wished to speak either in support or in opposition to the proposal and receiving no response, he closed the public hearing.

Mr. Kelley moved to grant VC 96-P-050 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

Discussion followed between Messrs. Kelley and Hammack conceding that the size of the garage was a trifle large for that area of the lot but Mr. Kelley said that he accepted the applicant's written and verbal statement that he would preserve trees.

Mr. Hammack suggested that perhaps the garage could be relocated in such a way as to not require any variance or perhaps only a minimal one. He stated that, because of that fact, he believed that the applicant failed to satisfy the hardship requirement. He also noted that, although he wasn't in the habit of redesigning projects, he believed that 4 feet from the property line was too close although he did recognize that the neighboring homes faced another direction.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-P-050 by CHARLES W. SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of an accessory structure 4.0 feet from side lot line and rear lot line, on property located at 3312 Brandy Court, Tax Map Reference 60-1((16)32, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,720 square feet.
4. This was a close call but the applicant satisfied the nine required standards for the granting of a variance although the structure will be a little large and a little close to the lot line.
5. The applicant testified that he was trying to preserve the existing trees on the lot by placing the structure in the proposed location.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of detached garage shown on the plat prepared by Alexandria Surveys, Inc., dated March 18, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-1 with Mr. Hammack opposed.
Mr. McPherson was absent from the meeting.

Page 705, July 2, 1996, (Tape 1), CHARLES W. SMITH, VC 96-P-050, continued from Page 704

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 705, July 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. SINH T. NYUGEN, VC 96-M-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 1.5 ft. from side lot line. Located at 3293 Annandale Rd. on approx. 10,010 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sinh T. Nyugen, 3293 Annandale Road, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He explained that the applicant sought to construct a carport addition 1.5 feet from the western side lot line which places it 5 feet into the minimum side yard therefore requiring a variance of 3.5 feet, which is what the applicant was requesting.

Mr. Nyugen explained that because of his and his family's advancing age, a carport to protect them from the weather and elements had only recently become a need. He pointed out that if the Zoning Ordinance requirements were followed, the carport must be built 5 feet from the side yard lot line which would render it only 10 feet wide. Mr. Nyugen submitted that was too narrow for practical use as most mid-sized automobiles would not be sheltered effectively putting its occupants out in the elements. He submitted that 14 feet would be adequate and reiterated that his family truly needed a carport.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Mr. Dively made a motion to approve VC 96-M-052 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-M-052 by SINH T. NYUGEN, under Section 18-401 of the Zoning Ordinance to permit construction of carport 1.5 feet from side lot line, on property located at 3293 Annandale Road, Tax Map Reference 60-1((10))13, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,010 square feet.
4. The carport will be a bit closer to the lot line than the Board usually allows but this is an extremely narrow lot and it is not a particularly wide carport that is being requested.
5. Given the circumstances and the hardship, the request is reasonable.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the carport shown on the plat prepared by Absolute Surveys Inc., dated May 1, 1995, and revised through December 28, 1995, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 701, July 2, 1996, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE M. & PENNY F. MCGRATH, VC 96-S-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line such that side yards total 19.0 ft. Located at 8706 Etta Dr. on approx. 9,899 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-1 ((9)) 188.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eugene M. McGrath, 8706 Etta Drive, Springfield, Virginia, was a trifle confused over what the Board was asking him. David Hunter, the Staff Coordinator, informed the Board that there were no changes to the affidavit but there was a change in the plat. Mr. McGrath understood and acknowledged that his affidavit was correct.

David Hunter, Staff Coordinator, presented the staff report. He explained that the applicant proposed to construct a dormer on the northern side of the existing dwelling eight feet from the side lot line such that the total side yards equals 19.0 feet. Mr. Hunter said that Section 3-307 of the Zoning Ordinance requires that total side yards on a lot zoned R-3 Cluster District equal 20 feet and therefore, the variance requested was 1.0 foot.

Mr. McGrath stated that the lot was quite narrow with his home designed in such a manner that rendered the dining room extremely narrow with no room to move around the dining room table. He wanted to construct a dormer to place their buffet which then would allow a sufficient aisle way around the table. Mr. McGrath explained that he promised his next door neighbors, the Burkes, that they would not ask for more than a 1 foot variance and would not place windows on their side.

Chairman DiGiulian called for speakers either in favor or opposition but received no response. He then closed the public hearing.

Mr. Hammack moved to grant VC 96-S-057 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1996.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 96-S-057 by EUGENE M. AND PENNY F. MCGRATH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.0 feet from side lot line such that side yards total 19.0 feet (**THE BZA ALLOWED THE ADDITION TO BE 2 FEET WIDE SUCH THAT TOTAL SIDE YARDS TOTAL 19.5 FEET**), on property located at 8706 Etta Drive, Tax Map Reference 89-1((9))188, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 1996; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 9,899 square feet.
4. The applicant has satisfied the nine requirements for a variance; in particular, the lot is narrow.
5. The request is minimal.
6. There is no other place the addition can be placed.
7. The addition is more in the nature of a window than an addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED IN PART** with the following limitations:

1. This variance is approved for the location of a dormer window shown on the plat prepared by Cervantes and Associates, P.S. and revised by Thomas F. Conlon Jr. dated August 28, 1965, and revised through July 12, 1996, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The dormer shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently

Page 709, July 2, 1996, (Tape 1), EUGENE M. & PENNY F. MCGRATH, VC 96-S-057, continued from Page 708)

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

Discussion followed between Mr. and Mrs. McGrath, Board members Messrs. DiGiulian, Dively, and Hammock, and Ms. Jane Kelsey, Chief, Special Permit and Variance Branch, over granting more than a one-foot variance versus a six-inch variance and whether or not the Burkes might contest. Because it was decided that a variance of six inches was satisfactory, Mr. McGrath was instructed to submit a revised plat within 30 days. Chairman DiGiulian clarified that the BZA's policy is that the plat must be consistent with the motion.

Mr. Hammack then amended his motion to grant a variance of six inches which was seconded by Mr. Dively and Mr. Ribble and passed unanimously by a vote of 6-0 with Mr. McPherson absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 1996. This date shall be deemed to be the final approval date of this variance.

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Page 709, July 2, 1996, (Tape 1), Action Item:

Request for Additional Time
Forthway Center for Advanced Studies, Inc., SPA 78-C-307-1

Mr. Pammel commented that the request for additional time, being its fourth extension, seemed exceptionally long as it spanned six years. He noted that the applicant intended to file a permit for additional changes and it was his opinion that it would be appropriate to allow the application to lapse and refile a new one. Because of these concerns, Mr. Pammel moved to deny the request for a further extension. Mr. Hammack seconded the motion for the purpose of further discussion.

Following a discussion among the Board members, Mr. Pammel amended his motion to defer the application for one week to allow sufficient time for review and for staff to notify the applicant that he may appear before the Board and explain his case.

Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. McPherson absent from the meeting.

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Page 709, July 2, 1996, (Tape 1), Action Item:

Approval of Resolutions
June 25, 1996 hearing

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Hearing no objection, Chairman DiGiulian so ordered.

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Out of Turn Hearing Request
Eugene J. Cullinane, VC 96-D-094

Mr. Kelley stated that he found no reason to justify an out-of-turn hearing so he, therefore moved to deny the request.

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The following is by Jane Kelsey, Chief, Special Permit and Variance Branch, ZED, OCP. At its regular meeting of July 2, 1996, after its regular agenda items and action items had been completed, the Board of Zoning Appeals met in the conference room at the Government Center with the following members of staff: James P. Zook, Director, Office of Comprehensive Planning (OCP), Barbara A. Byron, Director, Zoning Evaluation Division, OCP; Jane W. Gwinn, Director, Zoning Administrator, OCP; William Shoup, Deputy Zoning Administrator, and Jane C. Kelsey, Zoning Evaluation Division, OCP to discuss future meeting dates and scheduling of applications which are heard by the Board of Zoning Appeals, the Board of Supervisors' request for "Citizen Friendly" initiatives, the effect of the Board of Supervisors' policies in Comprehensive Plan and Zoning Ordinance on staff's position on applications and appeals and how best to handle BZA's concerns, if any, about staff.

The first item concerned meeting dates in August. It was agreed that the Board would keep to its current schedule this year, with meetings on August 6 and August 13 and that it would not be necessary to meet on September 3, 1996. In 1997, daytime meetings would be scheduled weekly for the first three weeks in August, with the third meeting being an 'if needed' meeting. After the last meeting in August, there would be a three (3) week break. It was reiterated that the BZA did not wish to meet the day after Labor Day.

In addition, it was agreed that since appeals are often withdrawn or deferred after they have been scheduled for a hearing date, the Deputy Zoning Administrator should double-schedule some of the appeal applications, taking into account the appeal applications which he believes will be withdrawn or deferred so as to have a more even weekly workload meeting.

It was agreed that the Board and Staff would meet again in November after the Zoning Ordinance Amendment on fees has been in place for several months to determine if that has had any impacts on the number of appeal applications processed and whether further modifications to the BZA's hearing schedule would be warranted.

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The BZA did not take a formal position on whether or not their meetings should or should not be televised. The members affirmed the premise that their meetings should be public and that there should be openness in all decisions so that the citizens are aware of what they do and why, but indicated that perhaps this avenue would not be cost effective.

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The BZA's consensus regarding the effect of Board of Supervisors' policies in Comprehensive Plan and Zoning Ordinance on staff's position on applications and appeals was the BZA always takes these into consideration and always abides by what they believe the Comprehensive Plan recommends, but that the Comprehensive Plan is a guide, not a mandate and that they do abide by the Zoning Ordinance regulations and standards.

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The BZA's consensus regarding staff's support was that staff support was excellent, that staff has provided the BZA with the information the BZA requests in a satisfactory time frame and that there are no known problems at this time. One of the members did request information concerning the procedures for zoning enforcement in the County.

Page 711, July 2, 1996, (Tape 1), Information Item:

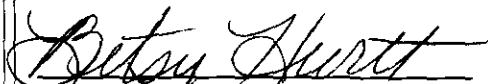
The BZA has previously requested that the County Attorney's office provide it with information concerning how decisions are made to litigate zoning violations. The BZA was advised that the County Attorney's office is prepared to come to the BZA at a later date with that information. The BZA requested that the County Attorney's office also discuss the County Ordinance regarding cutting grass on ones property and the case which had been litigated concerning this issue.


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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Paula McFarland

Approved on: August 13, 1996


Betsy S. Hunt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals