

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 9, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble. There were no members absent.

Chairman DiGiulian called the meeting to order at 9:00 a.m. He asked if there were any Board Matters to bring before the Board.

Mr. Hammack commented that he had recently scanned a provision in the State Code that would allow the BZA to grant variances for a term. He stated that it would be useful and helpful to be kept abreast of those changes that may affect the Board's decisions. Mr. Hammack then requested that staff provide the BZA with an oral presentation of any changes to the State Code which affect the Fairfax County's Zoning Ordinance as it relates to BZA actions.

There being no further Board Matters, Chairman DiGiulian called for the first scheduled case.

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Page 1 , September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. MONTERO, ENRIQUE, VC 97-L-055, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of pool and to allow accessory structure and 6 ft. high fence to remain in a front yard on a lot containing less than 36,000 sq. ft. Located at 6163 McLendon Ct. on approx. 12,995 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3((28))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. Enrique Montero, 6163 McLendon Court, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She pointed out that the applicant's property was somewhat unusual in that it was a through lot, effectively having two road frontages, both on McLendon Court and Tilbury Road. She explained that the Zoning Ordinance states that there can be no accessory use located in any front yard on a lot containing 36,000 square feet, or less, and that the indicated structures are located at the rear of the house along the Tilbury Road frontage.

Enrique Montero stated that he wanted to construct a swimming pool and be allowed to keep the shed and the fence where they were presently located.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Hammack moved to grant VC 97-L-055 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 2, 1997.

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

MONTERO, ENRIQUE, VC 97-L-055, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of pool and to allow accessory structure and 6 ft. high fence to remain in a front yard on a lot containing less than 36,000 sq. ft. Located at 6163 McLendon Ct. on approx. 12,995 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3((28))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 September 9, 1997; and

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

1. The applicant is the owner of the land.
2. The subject property has a double front yard with only the rear yard necessitating a variance.
3. The rear yard abuts a privately maintained dirt road which would not be impacted by the variance.
4. There is no detrimental impact on the neighbors.
5. There is no adverse effect to 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 a swimming pool, accessory storage structure, satellite dish and six (6) foot high fence shown on the plat prepared by Harold A. Logan, dated May 9, 1997, 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 unanimous vote of 5-0 with Messieurs Pammel and Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 3, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. HARRISON, LYNN, SP 97-L-027, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals. Located at 3710 Roxbury La. on approx. 1,114 sq. ft. of land zoned R-12, HC. Lee District. Tax Map 101-2((14))51A.

After Chairman DiGiulian announced this agenda item, Mr. Kelley, pointing out the affidavit statement, recused himself from this application's determination explaining that he had a long-time business association with the applicant.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynn Harrison, 3710 Roxbury Lane, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report. She described the ages and breeds of the dogs and the home and grounds on which they are kept. She noted that if the Board intended to approve the modification for the limitation of keeping of animals, that staff recommended that the Board condition its approval by requiring conformance with the September 2, 1997 Proposed Development Conditions contained in Appendix 1 of the Staff Report.

Lynn Harrison explained that she takes her elderly dogs to her work five days a week and they are not at home for a majority of daytime hours. She conceded that she allows the dogs to run free in a semi-enclosed rear area of her complex but constantly monitors them so as not to be considered a nuisance. Ms. Harrison stated that she respects her neighbors' feelings and strives to keep her pets well-heeled and within close proximity at all times. She responded to Mr. Dively's question concerning the age and health of her dogs.

Chairman DiGiulian called for speakers in support or opposed to the special permit and receiving no response, closed the public hearing. He noted that there were two letters in opposition which are contained in the file.

Mr. McPherson moved to grant SP 97-L-027 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 2, 1997.

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

HARRISON, LYNN, SP 97-L-027, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitations on the keeping of animals. Located at 3710 Roxbury La. on approx. 1,114 sq. ft. of land zoned R-12, HC. Lee District. Tax Map 101-2((14))51A. 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 9, 1997; and

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

1. The applicant is the contract lessee of the land.
2. The four dogs have been at the subject's home for a long time and they are all older animals.
3. The applicant has demonstrated good faith efforts to manage her pets and to be considerate of the neighbors.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3710 Roxbury Lane, 1,114 square feet, shown on the plat submitted by Lynn Harrison, dated March 31, 1997, and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing four dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used for the dogs shall be cleaned of animal debris 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 Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Mr. Dively seconded the motion which carried by a 4-1 vote with Mr. Pammel abstaining; Mr. Ribble was not present for the vote; Mr. Kelley had recused himself.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 4 , September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. EARL, LARRY & SILVANA, VC 97-H-054, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 1802 Kilbarry Ct. on approx. 36,334 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-3((27))12.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry and Silvana Earl, 1802 Kilbarry Court, Vienna, Virginia, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She noted that a minimum rear yard of 25 feet is required in an R-1 District, therefore, the applicants were requesting a variance of 7 feet for the construction of a room addition which would be 18 feet from the rear lot line.

Larry Earl explained that when they purchased the house in March, 1997, their realtor had assured them that there would be no problem with constructing a room addition onto the rear of the home. He explained that both his wife and daughter are allergic to insects and with a flood plain at the rear of their property, there is an insect problem which causes their open deck to be of limited use. Mr. Earl stated that they sought approval to replace the deck with a "Florida" room, maintaining that the deck's enclosure would afford the family full use of their property.

Chairman DiGiulian called for speakers either in support or in opposition. Receiving no response, he closed the public hearing.

Mr. Pammel moved to grant VC 97-H-054 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 2, 1997.

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

EARL, LARRY & SILVANA, VC 97-H-054, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 1802 Kilbarry Ct. on approx. 36,334 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-3((27))12. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 9, 1997; and

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

1. The applicants are the owners of the land.
2. The unusual shape of the lot with its very narrow depth towards the rear.
3. A park, which will never be developed, abuts the rear portion of the subject property so there is no encroachment upon the area.
4. The existing deck is to be replaced with the same.

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

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

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

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of a room addition shown on the plat prepared by Nicholas Lucarelli, dated received June 10, 1997, 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 unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 6, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. FANO, ROBERT M., VC 97-S-056, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 7911 Bracksford Ct. on approx. 10,168 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2((8))138.

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 M. Fano, 7911 Bracksford Court, Fairfax Station, Virginia, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She explained that design standards for PDH Districts are approved by the Board of Supervisors on the final development plan of the subdivision and that subsequent additions must conform to that conventional zoning district which most closely characterizes the development under consideration provided that the desired alteration is in substantial conformance with the approved final development plan. She clarified that the Fano's subdivision was most similar to the R-2 Cluster District which requires a minimum rear yard of 25 feet and; therefore, the Fano's were requesting a variance of 15 feet for the construction of their screened porch addition.

Robert M. Fano described the proposed deck's structure. He pointed out that one corner of his house sits approximately 21 feet from the rear property line and that if he had been aware of the set-back requirements during the house's construction, they might have contracted the builder to build the porch at that time. Mr. Fano stated that his design was approved by his homeowners' association and his neighbors. He pointed out that, when he first considered a screened porch addition, he was advised by the County's Permits and Variance Branch that no variance was required and only after his contractor applied for the permit, were they informed that a variance was necessary. Mr. Fano contended that his variance application is based on undue hardship and the principle of equity because full use and enjoyment of his property could not be attained without the use of a screened porch. He also pointed out that he had considered the adjacent property owners' privacy with the deck's placement and that its design was architecturally compatible with his home as well as being similar to the neighborhood's decks and screened porches. Mr. Fano, in his closing comments, advised that a reputable and competent contractor had been selected to construct the addition.

Chairman DiGiulian called for speakers either in support or in opposition to the variance request and receiving no response, he closed the public hearing.

Mr. Ribble moved to grant VC 97-S-056 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 2, 1997.

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

FANO, ROBERT M., VC 97-S-056, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 7911 Bracksford Ct. on approx. 10,168 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2((8))138. 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 9, 1997; and

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

1. The applicant is the owner of the land.
2. At the time of the home's construction, the addition could have been built by-right.
3. The house's unusual placement on the lot places only a portion of the addition within ten feet of the lot line.

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Charles E. Powell, dated May 5, 1997, 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 unanimous vote of 7-0.

Mr. McPherson, stating that he supported the application, commented that it seemed foolish to him that a homeowner is required to come before the Board of Zoning Appeals to request the type of variance which they just reviewed. He noted that, for practical purposes, the requested addition should have been constructed at the time of the home's completion. Mr. McPherson pointed out that, in situations such as this, there is, most definitely, a doorway which leads to nowhere and he has come to refer to such cases as "the stairway to heaven" application.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 8, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. TABLER, PAUL E., VC 97-B-057, 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 18.2 ft. Located at 10842 Paynes Church Dr. on approx. 9,840 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3((5))85.

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 E. Tabler, 10842 Paynes Church Drive, Fairfax, Virginia, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She stated that a variance of 1.8 feet was being requested in order for the applicant to construct a garage addition to enclose an existing carport which is located 8.7 feet from the side lot line. She noted that the applicant's property is located in an R-3 (Cluster) zoned district which requires a minimum side lot of 8 feet with a total side yard of 20 feet.

Paul E. Tabler stated that both security and safety reasons were justification for requesting the variance. He explained that he and several of his neighbors have had break-ins and thefts, therefore, enclosing his carport would minimize such an occurrence. He further explained that during inclement weather, snow and ice, an enclosed garage is far more safe when carrying items such as groceries from the car into the house as well as simply entering or exiting their vehicles. Mr. Tabler noted that several of his neighbors have enclosed their carports and that he enjoyed the neighborhood's approval for the construction he proposed.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Mr. Kelley moved to grant VC 97-B-057 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated September 2, 1997.

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

TABLER, PAUL E., VC 97-B-057, 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 18.2 ft. Located at 10842 Paynes Church Dr. on approx. 9,840 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3((5))85. 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 9, 1997; and

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

1. The applicant is the owner of the land.
2. The structure, a carport, is being enclosed and will not be any closer to the lot line than at the present.
3. There has already been several variances granted in the immediate vicinity.

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 attached garage shown on the plat prepared by L. Carl Gardner, Jr., dated November 8, 1992, recertified May 16, 1997, 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 unanimous vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 10, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. BILLINGSLEY, ZITA, VC 97-D-059, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6620 Tucker Ave. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4((9))34A.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lewis Billingsley, 6620 Tucker Avenue, McLean, Virginia, the applicant's son and acting as her agent, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She noted that the applicant was requesting a

4-foot variance in order to construct an attached porch which would be placed 8 feet from the side lot line; minimum of 12 feet is required in a R-3 district.

Lewis Billingsley explained that the subject porch would actually replace their present porch which was built circa 1960s and is now in a dilapidated condition. He pointed out that the plans would afford a handicap accessible ramp, would be architecturally compatible with the house, and would be very attractive, thereby complementing the neighborhood.

Chairman DiGiulian called for speakers either in support or opposed to the variance and, receiving no response, he closed the public hearing.

Mr. Dively moved to grant VC 97-D-059 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions in Appendix 1, contained in the staff report dated September 2, 1997.

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

BILLINGSLEY, ZITA, VC 97-D-059, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6620 Tucker Ave. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4((9))34A. 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 9, 1997; and

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

1. The applicant is the owner of the land.
2. This is a modest variance request.
3. This is a replacement of the existing, but dilapidated, porch.
4. There is ample precedence of this type of variance as evidenced in the staff report.

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

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

as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of an attached porch shown on the plat prepared by Clyde V. Kelly, dated February 12, 1997, recertified June 10, 1997, 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 unanimous vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 12, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. LE, THUONG N. & TSAN N., VC 97-L-060, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line. Located at 7120 Evanston Rd. on approx. 8,945 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1((6))(5)117A.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Ba Pham, 2922 Willston Place, #201, Falls Church, Virginia, agent for the applicant, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She stated that the applicant was requesting a 4.8-foot variance in order to construct a two-story garage and bedroom addition.

Speaking on behalf of the applicant, John Ba Pham explained that a garage was necessary to park one of the Le's three cars and that their house is a split level so the requested two-story addition would bring the existing roofline onto an even plane.

Chairman DiGiulian called for speakers either in support or in opposition to the variance and receiving no response, closed the public hearing.

Mr. McPherson moved to grant VC 97-L-060 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions in Appendix 1 contained in the staff report dated September 2, 1997.

Mr. Pammel commented that although this garage variance request was not the normal case considered by the BZA, he had no problem with it; however, he could not support the motion to grant the variance because of the two-story addition which, in his opinion, was too large with far too much bulk.

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

LE, THUONG N. & TSAN N., VC 97-L-060, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line. Located at 7120 Evanston Rd. on approx. 8,945 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1((6))(5)117A. 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 9, 1997; and

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

1. The applicants are the owners of the land.
2. There has been a good-faith effort on the part of the applicant to present their case and to demonstrate that the proposed garage shall serve a useful and worthy purpose.
3. The design evidences architectural compatibility with the house.
4. The request is reasonable and the variance is relatively minor.

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

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

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

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

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

1. This variance is approved for the location of a two story attached garage shown on the plat prepared by Donald E. Shultz, dated April 11, 1997, revised through June 9, 1997, 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 6-1 with Mr. Pammel opposed.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 14, September 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. CRITELLI, FRANCIS X. & HENRIETTA T., VC 97-S-061, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line. Located at 6900 Spur Rd. on approx. 11,630 sq. ft. of land zoned R-2. Springfield District. Tax Map 88-2((4))505.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Francis X. Critelli, 6900 Spur Road, Springfield, Virginia, replied that it was.

Jennifer Smolko, Planning Intern, presented the staff report. She explained that a minimum side yard lot line of 8 feet is required in an R-2 (Cluster) District, therefore, the applicants were requesting 2.4-foot variance to permit the construction of an addition onto their home.

Francis X. Critelli explained that they wanted to build an addition onto their house which would be utilized as a three-season room and, upon his and his wife's forthcoming retirement, would be functional as a recreation room which, being located on the first/main floor, would be easily accessible as there are no stairs to negotiate. He said that the design plans had the complete support of his contiguous neighbors and that the homeowners' association gave its unanimous approval for the addition. Mr. Critelli noted that numerous plans were considered so as to mitigate any impact but the topography of his lot imposed constraints on the addition's location.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, he closed the public hearing.

Before making his motion, Mr. Hammack commented on the attractive design of the addition and how it would favorably complement the neighborhood. He then moved to grant VC 97-S-061 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 2, 1997.

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

CRITELLI, FRANCIS X. & HENRIETTA T., VC 97-S-061, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line. Located at 6900 Spur Rd. on approx. 11,630 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2((4))505. 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 9, 1997; and

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

1. The applicants are the owners of the land.
2. The topographical condition of the parcel imposes constraints on where an addition can be placed.
3. The design is attractive and compatible with its surroundings.
4. The variance request is modest.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 room addition shown on the plat prepared by R.C. Fields, JR, dated May 16, 1997, 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 unanimous vote of 6-0 with Mr. Kelley not present for the vote.

At this time, Mr. Critelli, on behalf of his wife and himself, expressed his appreciation to Ms. Carolyn Blevins, of the County's Planning staff, for her capable assistance and he warmly thanked all the staff for each's courteous help throughout the variance process.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 17, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 16, September 9, 1997 (Tape 1), Scheduled case of:

9:30 A.M. LOUIS WILSON INGRAM, A 1997-MV-018, Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 8213 Doctor Craik Ct. on approx. 2,671 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 102-3((21))40.

William Shoup, Deputy Zoning Administrator, called the Board's attention to the applicant's August 21, 1997 letter requesting withdrawal of his appeal.

Mr. McPherson moved to accept the withdrawal of Appeal, A 1997-MV-018 which was seconded by Mr. Ribble and carried by a unanimous vote of 7-0.

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Page 16, September 9, 1997 (Tape 1), Scheduled case of:

9:30 A.M. WOLFE BROTHERS, INC., RAYMOND L. WOLFE AND JAMES B. WOLFE, A 1997-DR-013, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a contractor's office and shop and a storage yard, and parking commercial vehicles in the R-2 District, all in violation of Zoning Ordinance provisions. Located at 1894 Virginia Ave. on approx. 0.5 ac. of land zoned R-2. Dranesville District. Tax Map 41-1((1))15. (MOVED FROM 7/22/97)

Chairman DiGiulian called the applicant's agent to the podium and asked him to identify himself to the Board of Zoning Appeals (BZA).

Agnew Swynford, III, Esquire, stated his name, listed his business address as 6400 Arlington Boulevard, Suite 142, Falls Church, Virginia, and explained that he represented Messieurs Raymond L. and James B. Wolfe, the appellants, for Appeal, A 1997-DR-013.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated August 28, 1997 summarizing that the appellants are operating a contractor's office and shop and a storage yard, and are parking commercial vehicles in the R-2 District, all in violation of Zoning Ordinance provisions. He further explained that the Notice of Violation had also cited the storage of miscellaneous construction materials but that the latter was not addressed by the appellants as it was resolved. Mr. Shoup described the Wolfe's construction vehicles, noted definitions of the Zoning Ordinance which pertained, applied facts suitable for the Wolfe's business and addressed grandfather rights which were raised by the appellants.

Mr. Shoup responded to Mr. McPherson's questions regarding the Wolfe's ownership of an additional lot, 15-A, which, he stated, had no impact on staff's determination.

Agnew Swynford, III, Esquire, stated that the Franklin Park area is an older, eclectic neighborhood which is in transition. He gave a brief history of the Wolfe's business, describing the types and use of their construction vehicles. Mr. Swynford submitted that because the types and use of these construction vehicles were not cited as being in violation of the Zoning Ordinance back in 1979 by Senior Zoning Inspector, Douglas S. Leigh, when he had issued a Notice of Violation to the Wolfes for the storage of construction materials, that the use was grandfathered.

Raymond Wolfe reported that four violations had been issued on his property since 1979 to the present and that their equipment has been on the property since 1969. He stated that their practice was to deal with the individual inspector for his determination of the Zoning Ordinance's provisions and stipulations and deal with the latter directly. Mr. Wolfe affirmed that, in his judgment and by the way he interpreted the Zoning Ordinance's definitions pertaining to construction vehicles, that their use is grandfathered and the parking of his vehicles should be allowed to continue.

Mr. Dively interjected that, in order to make an educated decision on the facts of this appeal, it was his belief that Mr. Leigh's opinions were not relevant and that Mr. Swynford should address the grandfather provisions that he has determined were relevant.

Mr. Swynford submitted that the use of the Wolfes' vehicles preceded enactment of the Ordinance in question and that the vehicles are not commercial vehicles.

Discussion followed between Mr. Dively, Mr. Pammel, Mr. Shoup, and Mr. Swynford concerning the description of commercial vehicles as defined in the Ordinance and the Ordinance's applicability of commercial vehicles and their uses between the years of 1959 through 1978.

Chairman DiGiulian called for speakers.

Wayne Knight, 912 Virginia Avenue, McLean, Virginia, spoke in opposition to the Wolfe's appeal. He stressed that the Franklin Park area is residential, not commercial nor industrial. He pointed out that there is pollution and construction debris, such as concrete waste materials, that has fallen down onto his property. Mr. Knight maintained that neither he nor any of his contiguous and adjoining neighbors support the Wolfe's construction/commercial endeavors.

There being no further speakers, Chairman DiGiulian called upon Mr. Shoup for closing staff comments.

Mr. Shoup emphasized that County records did not detail Douglas S. Leigh's investigations of the Wolfe Brothers, Inc., almost twenty years ago but Mr. Leigh had cited the Wolfe Brothers for parking a dumptruck and keeping construction equipment, a violation which is on-going today. He pointed out that Mr. Leigh's Notices of Violations were dated after the Zoning Ordinance had a definition for a commercial vehicle and it

was apparent that Mr. Leigh had considered some of the Wolfe's vehicles to be commercial and construction vehicles to have cited them. Mr. Shoup restated that there was no basis for grandfathering the vehicles and that the bottom line is that since 1959 only one commercial vehicle has been allowed to be parked on the property and the Wolfes' activities had commenced in 1969.

Mr. Swynford maintained that the construction rubble Mr. Knight spoke of was on the Wolfe's property when they purchased it. He reiterated that the pertaining Zoning Ordinance's definition was law in 1978 and that the Wolfe's continue to affirm that because Mr. Leigh had not cited any of the other vehicles except one dumptruck, that the other vehicles are not considered commercial nor construction equipment.

Chairman DiGiulian closed the public hearing.

Mr. Pammel commented that although the Wolfe Brothers have provided their community a service, as evidenced by the letters of support contained in the record, the grandfather argument is unfounded and that the legal issue is that there are commercial vehicles parked on the property. He concurred with Mr. Shoup's interpretation and determination that the appellants are parking commercial vehicles in an R-2 District which is in violation of the Zoning Ordinance provisions.

Mr. Pammel then moved that the BZA **UPHOLD** the Zoning Administrator's determination regarding Wolfe Brothers, Inc., Raymond L. Wolfe and James B. Wolfe, Appeal, A 1997-DR-013.

Mr. Dively seconded the motion.

Chairman DiGiulian stated that he opposed the motion because the Board heard only one person's testimony, Mr. Raymond Wolfe, that the vehicles were parked on the property prior to 1978, and there has been no one to refute it.

Mr. McPherson concurred with Chairman DiGiulian's observation adding that there were actually two lots involved which, in his opinion, should have been a matter of consideration.

The vote was three to three with Messieurs DiGiulian, McPherson, and Ribble opposed; Messieurs Dively, Hammack, and Pammel in support; Mr. Kelley was not present for the vote. Chairman DiGiulian clarified that four votes are required to overturn the Zoning Administrator; therefore, the Zoning Administrator's position stands.

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Page 18, September 9, 1997 (Tape 1), After Agenda Item:

Approval of May 20, 1997 and June 3, 1997 Minutes

As there was no objection, Mr. Hammack so moved and the vote to approve the minutes carried unanimously with Mr. Kelley not present for the vote.

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Page 18, September 9, 1997 (Tape 1), After Agenda Item:

Approval of 1998 Board of Zoning Appeals' Meeting Dates

To assure that there will be no conflicts between BZA meeting dates and the Board of Supervisors' Budget Hearing dates, Mr. Pammel moved to defer the approval of the 1998 BZA meeting dates for one week. The motion carried unanimously by a 6-0 vote with Mr. Kelley not present for the vote.

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Page 19, September 9, 1997 (Tape 1), Action Item:

Out-of-Turn Hearing Request, Cornwell Farm L.L.C., SP 97-D-040

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that staffing was an issue in rescheduling this case as well as the fact that the Board already has very full agendas. Chairman DiGiulian noted that a special permit was not necessary for the boarding of the horses. Mr. Pammel then moved to deny the request for an out-of-turn hearing. Mr. Hammack seconded the motion which carried unanimously by a 6-0 vote with Mr. Kelley not present for the vote.

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Page 19, September 9, 1997 (Tape 1 & 2), After Agenda Item:

Appeal Acceptance Request, Howard C. Kang

James Woolls, Esquire, 422 North Columbus Street, Alexandria, Virginia, representing the Kangs, requested that the Board permit this appeal and allow a public hearing to be scheduled. He disagreed with staff's determination that their appeal was not timely filed explaining that the first violation cited in February, storage of junk automobiles, concerned a previous tenant, and it was not contested because they believed it justified. The violation cited in July, he stated, concerned a different tenant, Town and Country Landscaping, and was for the keeping of construction vehicles and equipment. Mr. Woolls submitted that the second Notice of Violation, cited in July, constitutes a new decision which makes July, not February, the 30-day time-frame for which to file. He clarified that it is their position that if they acquiesced in the first decision, that they should not be precluded from appealing a later determination.

William Shoup, Deputy Zoning Administrator, explained that staff had determined that the Kang's property was being used as a storage yard. He listed the issues involved and the dates of the violations maintaining that Mr. Kang was made aware in February that the property could not be utilized as a storage yard. Mr. Shoup conceded that the current Notice of Violation does involve a different tenant but that the issue remains the same and they should have appealed the February 13th decision.

Mr. Shoup addressed Mr. McPherson's questions concerning the July 10, 1997 letter issued to Mr. Aderholt. He responded to Mr. Pammel's questions regarding whether a Board's previous determination may preclude the allowance of filing, for a period of one year, an appeal on an identical issue. In response to Chairman DiGiulian's question, Mr. Shoup gave staff's reasoning and justification for issuing a second violation notice.

Chairman DiGiulian interjected that, in his opinion, there were two different violations being discussed and that Mr. Kang's appeal should be accepted.

There being no objection to Chairman DiGiulian's recommendation, Mr. Ribble so moved. Messieurs Dively and McPherson seconded the motion which passed unanimously by a 6-0 vote; Mr. Kelley was not present for the vote.

The Board agreed that the public hearing on this appeal will be the morning of November 25, 1997.

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Page 19, September 9, 1997 (Tape 2), Action Item:

Out-of-Turn Hearing Request
Nancy S. Bushi, VC 97-M-088

Jane Kelsey, Chief, Special Permit and Variance Branch, responded to Mr. Hammack's question concerning the applicant's plans for the carport. Stating that there appeared to be numerous issues involved with this case, Mr. Hammack moved to deny the out-of-turn hearing request and that the scheduled date of October 28, 1997 shall remain the public hearing date for this variance application. Mr. Ribble seconded the motion which carried unanimously by a 6-0 vote with Mr. Kelley not present for the vote.

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Out-of-Turn Hearing Request
Wayne J. Howe & Andrea H. Howe, VC 97-V-087

Responding to Mr. Hammack's question, Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicants proposed to enclose their existing porch, construct an addition onto the porch, and to construct a fence. Mr. Ribble, noting that there were several issues to consider with this variance, moved to deny the out-of-turn hearing request. Mr. Pammel seconded the motion which carried unanimously by a 6-0 vote; Mr. Kelley was not present for the vote.

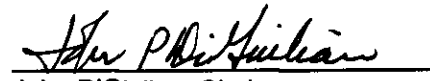
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As there was no other business to come before the Board, the meeting was adjourned at 10:43 a.m.

Minutes by: Paula A. McFarland

Approved on: October 28, 1997


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, September 16, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; and, John Ribble. James Pammel and Timothy McPherson were absent.

Chairman DiGiulian called the meeting to order at 9:10 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 21, September 16, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030, Appl. under Sect(s). 3-C03 of the Zoning Ordinance for church and related facilities and nursery school with an enrollment of 100 or less students daily. Located at 15113 Lee Hwy. on approx. 10.47 ac. of land zoned R-C, WS. Sully District. Tax Map 64-2((3))21; 64-2((2))19, 20, 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Robson, Agent, Robson Group Architects, Inc., 5674 Stone Road, Suite 230, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a Special Permit for a church and related facilities and a nursery school. The September 9th staff report and the Addendum to the staff report dated September 16, 1997, outlined numerous unresolved issues and recommended denial of the application. Staff recommended that if the Board intended to approve the application, that the Board subject its approval by requiring conformance with the revised proposed Development Conditions set forth in Appendix 1 of the Staff Report Addendum dated September 16, 1997.

Mr. Robson, Agent for the applicant, presented to the Board that the applicant had prepared its proposal in accordance with the guidelines of the Zoning Ordinance. Mr. Robson, in fact, stated that the applicant had exceeded those by greater FAR's and setbacks. Mr. Robson stated that there had been meetings with staff, people within the community, and the Western Fairfax Citizens Association Land Use Committee in order to resolve issues and concerns.

Mr. Robson addressed land use issues, transitional screening issues, transportation concerns, building size and undisturbed open space and expressed to the Board ways in which the applicant had already addressed the issues or ways in which the applicant proposed to address issues and concerns. He also stated that the applicant planned to bring an amenity to the community, a sewer system, which the applicant felt would be an enhancement to the community.

In conclusion, Mr. Robson stated that besides the obvious benefits that a church would bring to a community, the applicant would also be of great benefit by providing a safer intersection at Cedar Spring Road and Lee Highway and by making improvements to Cedar Spring Road. They would also be providing a sewer line which the residents could tap into, therefore, increasing property values.

Reverend Rob Brownhead, Pastor of Centreville Presbyterian Church, spoke to Board members regarding the long history of service that the church had been providing to the community such as foster care service, food/clothes closets, after school tutoring and meeting rooms for groups outside of the church, i.e. the boy scouts. He also discussed benefits that the church would provide to the community. Reverend Brownhead claimed that building a church in the community would enrich the quality of life in that community.

John Etcher, Pastor of Centreville Baptist Church, 5612 Euphrates Court, Centreville, Virginia, spoke in support of Centreville Presbyterian. Mr. Etcher stated that he had been before the BZA three times and that each time he came in, it was with a negative recommendation from staff. He pointed out that he observed that each time a church tried to build in an R-C district, they received a negative staff recommendation and asked that when a church tries to build in an R-C district, that it would not be assumed automatically that the use would be incompatible with the district. He asked that there be more favorable treatment of churches overall.

Glen Opterbeck, Pastor of St. Andrew Lutheran Church, 15113 Old Dale Road, Centreville, Virginia, spoke in support of the applicant stating the Centreville area is in need of strong congregations in the Centreville area to supply the services that are needed in the community.

Paul Johnson, 11603 Avendale Drive, Fairfax, Virginia, stated that he felt that it was unfair for the County to put staff in a position to ask, demand or enforce unwritten policies that the County has chosen to ignore on most of its projects. He cited the elementary school in Virginia Run, Centreville High School and the Government Center, which he claimed are in the R-C overlay district or the watershed protection area. Mr. Johnson claimed that none of these properties have provided the undisturbed open space that staff asks private developments to provide. He stated that the County needs to take a leadership role in letting people know that the issue is an important one because the County has in the past only shown that it is important for everyone else to do, but not for the County to follow. He stated that unless the County did this, it should not be enforced at the BZA level.

The following persons spoke in opposition of the application: Sean Kelby, 6631 Cedar Spring Road, Centreville, Virginia; Sylvia Kelby, 6631 Cedar Spring Road, Centreville, Virginia; Georgette, 6713 Cedar Spring Road, Centreville, Virginia, Lot 18; Gilda Carter, 6725 Cedar Spring Road, Centreville, Virginia, owner of Lot 16 and 17; Susan Nea, 6620 Cedar Spring Road, Centreville, Virginia; Mike Winaque, 15109 Lee Highway, Lot 22 E. of Lee Highway; Ralph Hardy, 6631 Cedar Spring Road, Centreville, Virginia; Jonathan Carter, 6725 Cedar Spring Road, Centreville, Virginia. The above listed are the property owners that live on Cedar Spring Road. They cited the following reasons for opposing the application: The proposed Special Permit would adversely affect the character of the neighborhood; the traffic would pierce the serenity of their neighborhood; property values would decrease; the church would adversely affect Cedar Spring Road because the road would not be able to handle the amount of traffic that the church would generate; the church would create drainage run-off problems; the church has no plan to preserve and protect water wells and creeks; the church would be destroying the habitat of the wild life in the area; the noise, lighting and visibility of the church would have a negative impact on the neighborhood; the church would cause safety concerns for the children that live in the neighborhood who play there and have to be picked up and dropped off by the school bus; the parking lots for the church would be directly in front of their houses; and, the residents on Cedar Spring Road would have to buy into the sewer system if built.

Mr. Robson spoke in rebuttal commenting on the applicant's willingness to work with the residents on Cedar Spring Road to resolve any issues or concerns regarding improving Cedar Spring Road, the median break on Lee Highway and the storm water management (which Mr. Robson stated would be resolved during the site plan review process).

There was a discussion between Board members and Mr. Robson regarding the timing of Phase III.

There was no further testimony. Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny the application. Mr. Ribble seconded the motion.

Mr. Kelley stated that he would make a motion to approve in part, eliminating Phase III for a period of time. He stated that he would have preferred the motion to state that the applicant would be able to present its case before the Board within a couple of months, with the staff and applicant eliminating Phase III for a time while they refined the conditions, cutting down the size of the church. Mr. Hammack stated that he would support that motion if the applicant and staff were closer together in resolving issues.

Mr. Dively asked Mr. Robson if he wanted to reassess the issues presented, in which Mr. Robson stated, that he would. Mr. Robson was asked by the Board how long he thought it would take to reassess the issues, in which Mr. Robson replied four to six weeks. The Board suggested that he take 60 days. November 18th was suggested as the next hearing date.

Mr. Hammack moved to withdraw his previous motion to deny and moved to continue the case for further evidence or testimony to November 18, 1997, at 8:00 p.m.

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9:00 A.M. ROBERT A. RIDDELL, VC 97-M-063, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard on a lot containing less than 36,000 sq. ft. of land zoned R-2. Located at 6409 Fairland St. Mason District. Tax Map 72-3((11))113.

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 Riddell, 6409 Fairland Street, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit construction of a detached carport in his front yard on a 21,827 square foot lot.

Mr. Riddell presented to the Board that he wanted to build the carport to protect his cars from falling tree limbs, tree sap, pollen, and bird droppings. He stated that the location would provide easy access in and out of the carport. He also stated that he had not had any objections from his neighbors.

There was a discussion between the Board and Mr. Riddell concerning a retaining wall in Mr. Riddell's front yard.

There were no speakers either in support or in opposition to the application.

Mr. Ribble made a motion to approve VC 97-M-063 for the reasons stated in the resolution.

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

ROBERT A. RIDDELL, VC 97-M-063, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard on a lot containing less than 36,000 sq. ft. of land zoned R-2. Located at 6409 Fairland St. Mason District. Tax Map 72-3((11))113. 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 16, 1997; and

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

1. The applicant has met 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 a detached carport shown on the plat prepared by Kenneth W. White, dated May 8, 1997, 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 4-0. Mr. Hammack, Mr. Pammel and Mr. McPherson were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GEORGE AND KATHLEEN STEVENS, VC 97-V-065, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from rear lot line. Located 2412 Belle Haven Meadows Ct. on approx. 8,612 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1((42))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. George Stevens, 2412 Bellhaven Meadows Court, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit construction of a screened porch addition 8 feet from the rear lot line.

Mr. Stevens presented to the Board the following reasons for the application: that his property is of an unusual shape, making it difficult to put the porch anywhere else; that his children are allergic to bees, so, for safety reasons, he needed a screened porch.

There were no speakers either in support or in opposition of the application.

Mr. Kelley made a motion to approve VC 97-V-065 for the reasons stated in the resolution.

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

GEORGE AND KATHLEEN STEVENS, VC 97-V-065, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from rear lot line. Located 2412 Belle Haven Meadows Ct. on approx. 8,612 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1((42))11. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution.

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 1997; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the requirements for a variance.
- 3. As indicated in the applicant's testimony, the lot has an unusual shape and there is no other place on the property to place an addition without a variance.

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

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

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of a screen porch shown on the plat prepared by Kenneth W. White, dated April 23, 1997, 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. Hammack, Mr. McPherson and Mr. Pammel were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 26, September 16, 1997, (Tape 1), Scheduled case of:

9:00 A.M. LE NGOC TIEN AND LE NGOC TRI, VC 97-B-062, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line. Located at 5502 Heming Av. on approx. 10,757 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-((2))(14)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 Ba Pham, 2922 Willston Place #201, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit the construction of an attached garage 3.3 feet from a side lot line.

Mr. Pham stated that there were three cars on the property and that the applicant would like to be able to put at least one car in the garage to make the area appear neater.

There were no speakers in support of the application.

Mr. Suchocki, 5514 Heming Avenue, Springfield, Virginia, spoke on behalf of some of the residents in the neighborhood in opposition of the application stating that the applicant had already put an addition on the

property when it was purchased which is quite large. He also stated that it was one of the smallest lots in North Springfield. Mr. Suchocki stated that there was very little room on that property to support additional construction. He also pointed out that the sign posted by the County to make the owners aware of the hearing was turned around so that it was not visible and cars were also parked in front of the sign to prevent visibility. Mr. Suchocki stated that the garage would be too close to the lot line. He stated that the neighbors in the community did not wish to see the lot developed any more.

Mr. Pham rebutted by stating that he realizes that the back yard is too narrow, but the front yard has at least 9 feet to work with.

There being no further questions or testimony, Mr. DiGiulian closed the public hearing.

Mr. DiGiulian stated that the Board was approving the application in part contingent upon the submission of new plats within 30 days showing the 12 foot garage.

Mr. Dively made a motion to approve the application for the reasons stated in the resolution.

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

LE NGOC TIEN AND LE NGOC TRI, VC 97-B-062, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line (**THE BOARD GRANTED A 12- FOOT WIDE GARAGE MAKING THE ADDITION 6.3 FEET FROM SIDE LOT LINE**). Located at 5502 Heming Av. on approx. 10,757 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-((2))(14)47. Mr. Dively made a motion that the Board of Zoning Appeals adopt the following resolutions

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1997; and

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

1. The garage will be a distinct improvement to the property.
2. The property is small and narrow and there is no other place to put a garage.
3. The garage is too large; this motion will be for a 12-foot wide garage and a new plat must be submitted.

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

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

the same vicinity.

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 an attached garage shown on the plat prepared by Peter R. Moran, dated April 7, 1997 and revised June 4, 1997 and October 1, 1997, 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 4-0-1. Mr. Hammack abstained. Mr. McPherson and Mr. Pammel were absent.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 28, September 16, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MICHELE F. DANDREA, SP 97-P-025, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.8 ft. from rear lot line. Located at 2200 Stefan Dr. on approx. 3,120 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4((38))59. (DEF. FROM 7/29/97 FOR READVERTISING)

There was a discussion between Board members and Michele Dandrea regarding her request for deferral in order for her to work with her homeowner's association. Ms. Dandrea stated that she learned at 4:30 p.m., Friday, September 12, 1997, that there were two Board members of the homeowner's association that were unhappy with her request. She stated that the news surprised her because her adjacent neighbors were in support of her application. Ms. Dandrea stated that she wanted to be able to dialogue with the Board members to explain the circumstances surrounding the violation.

Mr. Charles J. Boyle, 2224 Journet Drive, Dunn Loring, Virginia, Regal Oaks Subdivision, Vice President, Homeowner's Association, stated that the Homeowner's Association was prepared to proceed with all concerns and asked that the Board bring the case to resolution because it had been continued for some time.

There was a discussion between the Board and Ms. Dandrea regarding whether or not she would be hiring council, in which she replied that, she was. Mr. Ribble made a comment stating that each case is looked at by the Board of Zoning Appeals individually and that one case may or may not be precedent setting. He stated that usually it is not, if it has different circumstances.

There was a discussion between the Board and Staff regarding rescheduling of the case.

Mr. Dively made a motion to defer the public hearing until October 21, 1997, at 8:00 p.m. The motion was seconded by Mr. Kelley, which carried by a vote of 5-0.

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Page 29, September 16, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL, INC., SPA 90-S-024, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 90-S-024 for riding and boarding stable to permit continuation of use, and to amend previously approved conditions. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C, WS. Springfield District. Tax Map 66-4((1))15; 66-3((1))36. (DEF. FROM 8/12/97)

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 Goldman, Agent for the applicant, 6429 Clifton Road, replied that it was.

Brian Davis, Staff Coordinator, with the Rezoning and Special Permits Branch, made staff's presentation as outlined in the staff report. The applicant requested an amendment to SP 90-S-024 for a riding and boarding stable to permit continuation of use for a five-year period. It also included modification to the original approval which reflected the decreased impact of the use in regard to student enrollment, hours of operation, horse shows and the number of horses kept on site. The applicant also requested a waiver of transitional screening requirements along all lot lines in favor of existing conditions depicted on the special permit plat.

Mark Goldman stated that the school had been in operation in the area since 1990 and in northern Virginia since the 1950's with no negative impact. He stated that the changes reflected a reduction in activity. Mr. Goldman also stated that the use of the property would be consistent with the character of the neighborhood.

There was discussion between the Board and Mr. Goldman regarding whether or not the applicant was proposing construction, in which he replied, that there would be no construction.

There was discussion between the Board and Staff regarding whether a site plan was needed. Mr. DiGiulian stated that he wanted to see references to Article 17 deleted from the Development Conditions in the application (Condition #4).

There were no speakers either in support or in opposition of the application.

There was discussion between the Board and the applicant regarding the new proposed development conditions and whether or not they were acceptable to the applicant. The discussion also covered whether or not the applicant had to submit a site plan on the approval five years ago, in which the applicant stated that they did.

Mr. Ribble made a motion to approve SPA 90-S-024 for the reasons stated in the resolution.

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JUNIOR EQUITATION SCHOOL, INC., SPA 90-S-024, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 90-S-024 for riding and boarding stable to permit continuation of use, and to amend previously approved conditions. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C, WS. Springfield District. Tax Map 66-4((1))15; 66-3((1))36. (DEF. FROM 8/12/97) 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 16, 1997; and

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

1. The applicant is the lessee.

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, 6429 Clifton Road, (17 acres), and it is not transferable to other land.
2. (*) This Special Permit is approved only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Monaco and Strickhouser, P.C. dated July 1990, 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 the following:

Monday through Friday, 10:00 a.m. - 1:00 p.m. and 4:00 p.m. - 6:00 p.m.
Saturdays, 9:00 a.m. - 1:00 p.m.
5. The maximum daily enrollment shall be limited to six (6) persons.
6. (*) The maximum number of parking spaces on site shall be seventeen (17.) All parking shall be on-site as shown on the Special Permit Plat prepared by Monaco and Strickhouser, P.C. dated February 1990 and revised through July 1990. Excluding horse trailers owned by the applicant and/or permanently on site, there shall be no more than three (3) horse trailers on site at any one time on Mondays through Fridays and no more than five (5) at any one time on Saturdays.
7. The maximum number of horses on site at any one time shall be fourteen (14.)
8. (*) The existing light poles shall be in conformance with the glare standards specified in Article 14 of the Zoning Ordinance. If it is determined that these standards have been violated, the lights shall be removed or altered through the use of shields or other methods to prevent glare from projecting onto adjacent properties or the roads. There shall be no lighting of the riding ring after 6:00 p.m.
9. (*) The site entrance shall meet Virginia Department of Transportation (VDOT) requirements, unless waived or modified by VDOT.

10. (*) No new structures shall be constructed within an area between the centerline of Popes Head Road to forty-five (45) feet from the centerline and between the centerline of Clifton Road to forty-five (45) feet from the centerline as shown on the special permit plat. Should the existing fence fall into disrepair, it may be repaired without being considered as a new structure.
11. (*) This special permit shall expire on August 12, 2002.
12. (*) The Transitional Screening requirements shall be waived along all lot lines. The existing fencing shall be deemed to satisfy the barrier requirement.
13. There shall be no horse shows nor shall there be other special functions permitted on site.
14. The existing house on site shall be used solely as a residence for the owner or caretaker of the subject property.

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. 18-015 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 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 5-0. Mr. McPherson and Mr. Pammel were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 31, September 16, 1997, (Tape 1), Scheduled case of:

9:30 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, Appeal 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES. CONTINUED FROM 3/11/97 TO ALLOW APPLICANT TO FILE A SPECIAL PERMIT OR VARIANCE)

Dennis E. Burke asked the Board to defer the case, stating that it was deferred from March in order to file a variance. Mr. Burke stated that he discovered half way through the process, that he was supplied with the wrong forms and after filling the forms out, discovered that they needed a special permit instead. Mr. Burke, after speaking with staff, discovered that a house location survey was needed. He discovered that a house location survey was not sufficient with a special permit. The only requirement for the special permit was a survey. The survey was not done because the surveyor broke his wrist. Following that, Mr. Burke stated that his wife broke her ankle. He asked that the Board give a week's continuance.

There was discussion between the Board members and Mr. Burke regarding how much time was needed and what was needed to complete the process.

Mr. Dively stated that he would give the appellant one month to come back before the Board for a status update.

Mr. Ribble made a motion to continue until October 14th at 9:30 a.m. for a status update. The motion was seconded by Mr. Hammack which carried by a vote of 5-0.

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Page 32, September 16, 1997, (Tape 1), Scheduled case of:

9:30 A.M. GERALD COOPER, Appeal A 1997-MA-019, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the service station service station use has been discontinued and therefore, the continued sales and installation of tires constitutes the operation of a vehicle light service establishment without required special exception approval. Located at 5919 Columbia Pi. on approx. 35,500 sq. ft. of land zoned C-5, SC, HC. Mason District. Tax Map 61-2((1))120.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated September 8, 1997. He stated that the appellant is the owner of the property and leases the property to an individual who runs a tire sales and installation business from the property, which is at issue in the appeal. Mr. Shoup indicated that the BZA issued approval in 1967 for a special permit for operation of a service station and that the property has operated as a service station under different proprietors since that time; that in April of '96, the underground fuel storage tanks and fuel pumps were removed from the property, thereby, discontinuing the service station use. The appellant since then has had several interim uses on the site which included an auto airconditioner/radiator shop, a lawn mower repair service and, most recently, a tire installation sales business.

Mr. Shoup went on to cite that service stations under current Zoning Ordinance provisions are special exception uses in the C-5 districts and that based on the definition and longstanding administration of the Zoning Ordinance, service stations must involve the dispensing of fuel as a primary use. Tire sales and installation and the other minor repairs and services may be permitted as accessory and incidental uses to a service station. If those uses are primary uses, it is by definition a vehicle light service establishment, which is allowed only by special exception, which has not been obtained by the appellant. Therefore, Mr. Shoup stated, the appellant is, therefore, in violation of Par. 1 of Section 2-304 of the Zoning Ordinance.

Mr. Shoup further stated that if a special permit use ceases for any reason for a continuous period of two years, the special permit automatically terminates without notice. He stated that if the appellant is correct in that the service station use ceased in April of 1996, then they have until April of 1998 to reestablish the service station use. If that is accomplished, according to Mr. Shoup, then the service station would become the principle use of the property. The tire sales, etc., would be allowed in conjunction with a reestablished service station use provided that the services mentioned are operated as accessory and incidental uses.

The Board members questioned Staff regarding the principle use of the property and whether or not the appellant had a legal use.

Mr. Paul Miller, attorney for the appellant, stated to staff that all the appellant was requesting was that staff identify the kind of fuel storage tanks and various tank accessories needed to reinstall the tanks. He asked the Board to show some forbearance until April 2, 1998. He stated that the appellant should not be deprived of any economic use that he could get out of the property, that the pumps would be installed within two years of their removal.

The Board questioned Mr. Miller and Paul Jones, Environmental Consultants and Contractors, about the storage tanks that were removed from the property.

There were no speakers in support of the appellant's position.

The following speakers came forward in opposition of the appellant's position: Terry Kester, Dowdon Terrace, 3911 Wheat Court; Houston Summers; 5921 Summers Lane, Baileys Crossroads, Virginia; and Arthur Simpson, 3901 Wheat Court: Their main points were that the site had been abandoned for a long period of time; that the

station was now a dump and an eyesore; that the owners had refused to improve the property, and that the site had long-standing problems.

There was discussion between the Board and Mr. Summers concerning how long it had been since the applicant stopped dispensing fuel.

There was discussion between the Board and Mr. Miller regarding the length of time the applicant had owned the service station.

There was no further testimony. Chairman DiGiulian closed the hearing.

Mr. Hammack stated that there were technical issues in the case that were of concern to him. He commented that he did not want to make a motion to overturn the determination of the Zoning Administrator because he felt that the applicant was under the protection of a special permit that extended until April 2, 1998. Mr. Hammack went into discussing the definition of a service station. He stated that he was inclined to continue or defer decision until after April 2nd. Mr. Hammack expressed concern that the County stated that a special permit use cannot be decreased without being subject to losing rights to use the property. Mr. Hammack felt that the appellant was under some sort of technical protection.

There was discussion between Board members about how long it had been since the appellant had not pumped gas and whether or not pumping gas was a primary element of the definition of a service station.

Mr. Hammack made a motion to defer decision until April 1998. Mr. Ribble seconded the motion. The vote carried by a vote of 4-1. Mr. Dively voted nay.

Mr. Shoup indicated that the case be scheduled for the first hearing date in April and that it would have to be readvertised.

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Page 33, September 16, 1997, (Tape 2), Action Item:

Request for Additional Time
VC 94-L-160, Earl E. Elliot, Jr.

Mr. Hammack made a motion to approve the request for Additional Time. Mr. Dively seconded the motion which carried by a vote of 5-0. The new expiration date will be on August 22, 1998.

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Page 33, September 16, 1997, (Tape 1), Action Item:

Request for Reconsideration
Wolfe Brothers, Inc., A 1997-DR-013

Mr. Dively made a motion to deny the request for Reconsideration. Hearing no objection, the Chair so ordered.

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Page 33, September 16, 1997, (Tape 1), Action Item:

Approval of September 9, 1997 Resolutions

Mr. Dively made a motion to approve the September 9, 1997, Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0.

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Approval of Board of Zoning Appeals' 1998 Meeting Dates


Mr. Hammack made a motion to approve the Board of Zoning Appeals' Meeting Dates. Mr. Dively seconded the motion which carried by a vote of 5-0.

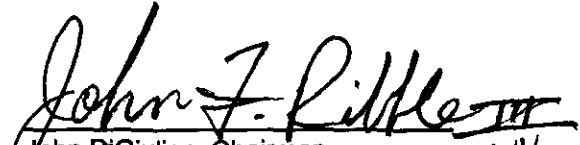
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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Denise Snyder

Approved on: October 28, 1997


Betsy S. Hurtt, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals VV

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 23, 1997. 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 8:08 P.M. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the After Agenda Items prior to proceeding with the scheduled case.

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Page 35, September 23, 1997, (Tape 1), Action Item:

Approval of September 16, 1997 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. Ribble seconded the motion which carried by a 6-0-1 with Mr. Pammel abstaining.

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Page 35, September 23, 1997, (Tape 1), Action Item:

Out-of-turn Hearing Request
Jessie W. Neal, SP 97-Y-044

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the request was for a modification to the yards in an R-C District and was a fairly straightforward application. Mr. Pammel made a motion to deny the applicant's request for an out of turn hearing based on the absence of a stated hardship. Mr. Hammack seconded the motion which carried by a vote of 7-0. The hearing is currently scheduled for November 25, 1997.

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Page 35, September 23, 1997, (Tape 1), Scheduled case of:

8:00 P.M. MARY NORTHRUP, WILLIAM & JANET BURROW, LYNWOOD & RUTH TART, GEORGE & MARGARET QUADRINO, Appeal A 1997-MA-017, appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a Residential Treatment Center can be established at Dominion Hospital without Board of Supervisors' approval of an amendment to Special Exception SE 90-M-005. Located at 2960 Sleepy Hollow Rd. on approx. 40,660 sq. ft. of land zoned R-3, HC, SC. Mason District. Tax Map 51-3((1))9A.

Jane Gwinn, Zoning Administrator, stated that the staff report as originally submitted was missing page 8 and apologized to the Board of Zoning Appeals (BZA) for the oversight. She explained that the appeal involved the determination that a Residential Treatment Center can be established at Dominion Hospital under its current special exception approval and that the establishment of the use does not require an amendment to the existing special exception. Ms. Gwinn said the property is developed with a psychiatric facility and the institutional use was first established pursuant to a special permit approved by the BZA in 1966 for an nursing home consisting of 222 beds. In 1970, the BZA approved a special permit amendment which allowed 100 beds to be converted to psychiatric facilities for treatment of psychiatric patients. The Board of Supervisors approved a special exception in 1990 which amended the special permit and phased out the nursing home component and expanded the current psychiatric treatment capabilities. The special exception was also granted subsequent to numerous development conditions, one of which was the subject of a determination last year regarding the condition which precluded the admission of violent patients.

Ms. Gwinn referenced the staff report which noted that the 1990 special exception application included several changes to the previous special permit approval such as phasing out the nursing home component, an increase in the patient capacity to 130 beds, and revised two conditions to allow admission of committed patients and treatment of outpatients, both of which had previously precluded by the special permit. The special exception also proposed two new programs: a program to treat Alzheimer patients and a program to provide neuropsychiatric care for head injury and trauma patients. The request also limited the additional 30 bed patient capacity to the outpatients in these two new programs. She added that it required the Health

Care Advisory Board's review and approval of these new programs as well as the proposal to treat committed patients. Dominion Hospital subsequently sought and received approval for treating committed and outpatients, but did not pursue the two other programs. Ms. Gwinn said the special exception also limited the number of committed and detained patients, the age of those patients, and precluded the admission of patients whose sole diagnosis was a chemical dependency or the admission of any violent patient. She said the special exception did not address the nature of the existing psychiatric facility or limit the types of programs for the 100 bed facility. In the spring of 1997, the hospital sought permission from the State to dedicate 20 of its 100 bed facility for a Residential Treatment Center to provide psychiatric care and treatment for mentally ill and emotionally disturbed adolescents. Ms. Gwinn said it was her understanding that the need for the separate license was prompted by, among other things, the age of the patients, the length of stay, and the need to meet the State educational requirements for the adolescent patients. She said it was also her understanding that it is common in Virginia for a psychiatric hospital to have a Residential Treatment Center as part of its facility and the purpose for the Treatment Center is consistent with the existing special exception approval. Ms. Gwinn explained that it appeared that a major distinction is the length of stay for the residential treatment patients and it was her understanding that over the years there have been patients at the hospital who have been there for extended periods of time with varying lengths of stay due to insurance and managed health care practices. She said it was her judgment that the Residential Treatment Center falls under the umbrella of permitted services at a psychiatric facility, which was approved by the special exception for Dominion Hospital. The Zoning Ordinance does not require an amendment of a special exception for a new program which is consistent with the use governed by the special exception, nor does it prompt a referral to the Health Care Advisory Board unless an amendment is required.

Ms. Gwinn said based on the approved special exception for a psychiatric treatment facility and the purpose of the Residential Treatment Center it was her determination that the Center is allowed under the special exception approval subject to the conditions which apply for all patient admissions. In closing, Ms. Gwinn said the license for the Residential Treatment Center was issued to Virginia Psychiatric Company, Inc., which is consistent with the special exception approval. She added that her determination did not address the relationship of Virginia Psychiatric Company, Inc. and Columbia/Arlington Hospital Systems, L.L.C. and the impacts, if any, on Condition 1 of the special exception; therefore, this should not and could not be addressed as part of this appeal thus it is an outstanding issue that she has not ruled on as of yet.

Mr. Hammack questioned when a ruling would be made on the relationship between Columbia/Arlington Hospital Systems, L.L.C. and Virginia Psychiatric Company, Inc. Ms. Gwinn said she was coordinating with Dominion Hospital's attorney and had been given an opportunity to review some documents and was currently awaiting additional information. She said she hoped to make a determination within a month or two depending on when she receives the requested information.

Mr. Kelley stated that he believed the case should be deferred until the Zoning Administrator had ruled on the relationship as he believed the issue had a great impact on the case as to whom has standing. He suggested that the case be deferred for three months. Ms. Gwinn noted that ruling would be another determination and might involve other appellants.

Mr. Hammack said it appeared to be a threshold issue since the special exception approved in 1990 is to the applicant only and the BZA is being asked to approve a residential treatment facility that appears, at least on its face, to be a different corporation. Ms. Gwinn explained that the license was issued to Virginia Psychiatric Company, Inc., which is the same entity that received special exception approval. Mr. Hammack said it seems that the approval would be for Columbia/Arlington Hospital, L.L.C. to operate the facility. Ms. Gwinn referenced the license contained in the staff report which references Virginia Psychiatric Company, Inc. Mr. Hammack pointed out the issue had been raised by the appellants and staff had addressed the issue in the staff report. Ms. Gwinn explained that she had responded that her decision had not addressed that facet. Mr. Hammack said the BZA was being asked to uphold the determination based upon consideration of only part of the facts. Ms. Gwinn said she was aware of the wording in Condition Number 1 and obviously if there is an issue with the Condition it may be applicable to the entire facility, which is an outstanding issue that she is trying to answer pending receipt of the requested documents. Mr. Hammack said he believed it would be prudent for the BZA to defer decision until such time as staff has had an opportunity to address the issue.

Mr. McPherson asked if it would be fair to say that the only reason the issue was brought to staff's attention was because of the objections raised by the appellants. Ms. Gwinn said that was correct. She added that the question was raised by the citizens on their behalf in addition to the State licensing office with regard to the Residential Treatment Center. A question was also raised by the citizens via the Board of Supervisors on whether the merger impacts the special exception.

Mr. Hammack said perhaps a name change at the Board of Supervisors level would be appropriate and again expressed concern with the potential violation of Condition Number 1. Ms. Gwinn said she had been in contact with Dick Hobson, attorney with the firm of McGuire, Woods, Battle & Boothe, who is the attorney for Dominion Hospital. She noted that Mr. Murphy with that firm was present.

Shawn Murphy, represented Dominion Hospital, called the Board's attention to the documents submitted to the BZA which included copies of the State licenses. He explained that Ms. Gwinn has requested information to substantiate that the Hospital is in compliance with Condition Number 1 and the Hospital believes that they are. Mr. Murphy said they are in the process of compiling additional documents to submit to the Zoning Administrator to allow her to make her determination and pointed out that the Hospital supports Ms. Gwinn's position, which is before the BZA tonight.

Mr. Hammack said if this program was strictly operated by Dominion Hospital why was there a need to submit documents. Mr. Murphy explained that Ms. Gwinn has asked the Hospital to determine whether, as alleged by some of the citizens, there has been a change in the operator of the Hospital and Dominion has agreed to provide such documents. Mr. Hammack asked the speaker to explain the relationship between Columbia/Arlington Hospital Systems, L.L.C. and Dominion Hospital. Mr. Murphy said it is Columbia/Dominion Hospital and reference was being made to a joint venture which stipulated as part of that venture the ownership, who has control of Dominion Hospital, has contributed its interest in the hospital to that L.L.C., but the arrangements of ownership of Dominion Hospital have remained unchanged. He added that if that is an issue that the BZA would like to consider he would ask that the BZA defer the appeal until such time that the Zoning Administrator has made a ruling to that affect.

Mr. Kelley said it appears that a lot of name changes are pretty routine, in particular those relating to special permits, and if this one was routine it could have been done a long time ago or at any time during this process. He said the issue seems to be more complex than a simple name change. Mr. Murphy said there has been no name change in the entity that operates Dominion Hospital; Virginia Psychiatric Company is operating the Hospital.

Mr. Hammack asked if Columbia system own an interest in Virginia Psychiatric. Mr. Murphy said Virginia Psychiatric Company is the entity that controls Dominion Hospital and nothing in the arrangements between other entities as a result of this merger has changed that in any way.

Chairman DiGiulian asked if the appellant's attorney would like to speak.

John McBride, represented the appellants, and agreed with Mr. Kelley that it was a very complex transition that affects not only the ownership but more importantly relates to the operator to the Dominion Center, an adolescent residential treatment program, which is the issue and it does not matter who owns the facility. He said there are documents, even the application for the State license, which references the L.L.C. and the fact that Dominion Psychiatric Company, Inc. donated its property in effect not in fee but rather in some long term contractual arrangement to avoid exactly this issue. Mr. McBride cited several documents that listed different organizations and that he also believed the issue should be addressed. The speaker pointed out that the issue was before the Zoning Administrator prior to May when she rendered her determination allowing the Center to be established and to operate without a special exception.

Mr. Kelley asked the Zoning Administrator how long she had been aware of the issue relating to Condition Number 1 prior to rendering a decision. Ms. Gwinn said it was approximately since April of this year that she wrote to Dominion's attorney requesting additional documentation. Mr. Kelley asked if she had considered delaying a decision until such time she had received the documents. Ms. Gwinn said perhaps in hindsight she should have, but at the time the focus was on whether the component was allowed.

Mr. Kelley made a motion to defer the appeal for approximately three months and perhaps at that time the Zoning Administrator will have received the documentation and will have rendered a determination. Mr. Pammel seconded the motion.

Mr. Hammack asked the Chairman to poll the audience to ascertain if there was anyone present who would like to address the issue relating to the operator referenced in Condition Number 1. The Chairman did so.

Mr. McBride came back to the podium and added that the material submitted to the BZA contained a letter from the Zoning Administrator dated in early May wherein she referred to an April memorandum dealing with the issue which indicated when the issue was brought to her attention.

There was no further discussion and the Chairman called for the vote. The motion made by Mr. Kelley carried by a vote of 6-1. Mr. McPherson voted nay. Chairman DiGiulian asked staff for a night meeting date.

Following a discussion between the BZA and staff, Jane Kelsey, Chief, Special Permit and Variance Branch, suggested November 18, 1997, at 8:00 p.m.

Mr. Dively asked the Zoning Administrator if she would be prepared to render a determination within that time frame. Ms. Gwinn said that would be possible provided she receives the additional information that she requested. Mr. Murphy agreed to cooperate with staff and promptly submit the information within a week to ten days.

Delegate Bob Hall came forward and said the State process for the approval of the Residential Treatment Center is a six month preliminary license and if at the end of that period the State is confident that everything is in compliance the Hospital will be issued a one year license which will be followed by a three year license. He added that if the BZA delays the public hearing for three months the six month time frame will have elapsed and the Hospital will then be within the one year time frame. Delegate Hall pointed out that a delay will cause confusion on the part of the State regarding the status of the license.

Mr. Kelley amended his motion to reflect a two month deferral and schedule the appeal for the night meeting of November 18, 1997. Mr. Ribble seconded the motion which carried by a vote of 6-1 with Mr. McPherson voting nay.

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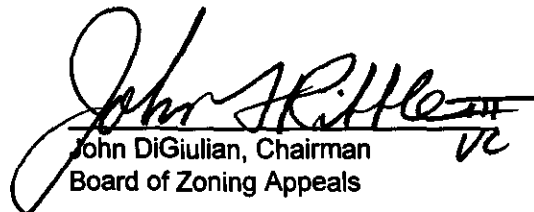
As there was no other business to come before the Board, the meeting was adjourned at 8:44 P.M.

Minutes by: Betsy S. Hurtt

Approved on: December 2, 1997



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 30, 1997. The following Board Members were present: Vice Chairman John Ribble, Robert Dively, Paul Hammack, Robert Kelley, and James Pammel. John DiGiulian and Timothy McPherson were absent.

Vice Chairman Ribble, called the meeting to order at 9:15 A.M. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 39, September 30, 1997 (Tape 1), Scheduled case of:

9:00 A.M. RICHARD L., JR., & VIRGINIA R. WAGNER, VC 97-D-064, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.30 ft. from side lot line. The property is located at 1003 Congress La. on approx. 21,382 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4((15))29.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Wagner, 1003 Congress Lane, McLean, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit construction of an addition of a garage, 9.3 feet from side lot line.

Richard Wagner said the lot is pie-shaped which places his house forward on the lot and this limits the side yard of the house. He said that the placement of the garage and a dining room, which will be above it, will impinge on the side offset. Mr. Wagner also said the property is on a cul-de-sac which limits availability of parking. He said the addition of a garage would enable them to have their cars garaged and out of the driveway. He further added that his is the only property that has two driveways coming from the cul-de-sac closely together. He said his neighbors do not have the same parking problem or access limits as they do. Mr. Wagner felt that a strict application of the setback would restrict reasonable use of his property and the granting of a variance would alleviate that restriction. He stated that the impingement of the 15-foot standard is only for the corner of his property and the corner of the carport of the adjacent neighbor. He also said that the construction would not be detrimental to the properties, but that it would enhance and increase the value of the properties. Mr. Wagner asked the Board to waive the eight-day waiting period to enable him to complete construction before Christmas.

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

Mr. Hammack made a motion to grant VC 97-D-064 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 23, 1997. He 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**

RICHARD L., JR., & VIRGINIA R. WAGNER, VC 97-D-064, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.30 ft. from side lot line. The property is located at 1003 Congress La. on approx. 21,382 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4((15))29, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed according to the requirements of all applicable State and County Codes and with the bylaw of 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 30, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine (9) required standards for a variance.
3. The applicant made a straightforward case for the shape of the lot, and the fact that the variance will be minimal.
4. There is no impact on the adjacent property.

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

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

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

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

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

1. This variance is approved for the location of an attached garage with a room addition above shown on the plat prepared by Kenneth W. White, dated June 24, 1997, 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

Page 41, September 30, 1997 (Tape 1), RICHARD L., JR., & VIRGINIA R. WAGNER, VC 97-D-064, continued from Page 40

must specify the amount of additional time requested, the basis for 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. DiGiulian and Mr. McPherson were absent from the meeting. The eight-day waiting period was waived.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 41, September 30, 1997 (Tape 1), Scheduled case of:

9:00 A.M. EARL L. & BERTHA L. MCCRACKEN, VC 97-B-066, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.8 ft. from side lot line. The property is located at 5526 Queensberry Ave. on approx. 10,640 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2((3))(27)21.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Eugene Luther, 5526 Queensberry Avenue, Springfield, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit construction of an attached carport to be located 3.8 feet from a side lot line.

Mr. Luther said he believed the reasons for the justification of the variance were Mrs. McCracken's severe physical conditions and the eight (8) steps from the front door which makes it difficult for Mrs. McCracken to get to the upper level. The addition of a carport will enable Mrs. McCracken to enter from a side door under the covering of the carport where there is only one step to enter the house on the living level.

Vice Chairman Ribble asked Mr. Luther if he wanted to comment on the letter which addressed the hardship level.

Mr. Luther stated that the lots in the neighborhood are uniform and were laid out to minimum lot width which does not leave much room on the side but that there is enough room between the two houses. He said the carport should not infringe on the adjoining properties and the structure will be compatible with the style of the house and other homes in the neighborhood.

There were no speakers, either in support or in opposition of the application, but there were letters of support submitted by neighbors. Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to grant VC 97-B-066 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 23, 1997, with the eight-day waiting period being waived.

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

EARL L. & BERTHA L. MCCRACKEN, VC 97-B-066, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.8 ft. from side lot line. The property is located at 5526 Queensberry Ave. on approx. 10,640 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2((3))(27)21, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed according to the requirements of all applicable State and County Codes and with the bylaws of 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 30, 1997; and

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

1. The applicant is the owner of the land.
2. The construction of a carport 3.8 feet from the side lot line requires a variance of 3.2 feet.
3. The applicant meets the prescribed standards for a variance as set forth in the Zoning Ordinance, specifically, a carport encroachment of 3.2 feet, which is an open carport.
4. This is a narrow lot and after the extension, a side yard of 3.8 feet will remain.
5. The additional testimony provided by the applicant supports the request 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 a carport addition shown on the plat prepared by Richard D. Townsend, dated June 6, 1997, 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 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. DiGiulian and Mr. McPherson were absent from the meeting. The eight-day waiting period was waived.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 30, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 43, September 30, 1997 (Tape 1), Scheduled case of:

9:30 A.M. NATIONS Banc MORTGAGE CORPORATION, SUCCESSOR BY MERGER WITH BOATMEN'S NATIONAL MORTGAGE COMPANY, A 1997-PR-022, Application. under Sect(s). 18-301 of the Zoning Ordinance. Determination that an existing dwelling which occupies portions of Lots 12A and 13A of Section 4 of the Pine Ridge Subdivision does not meet the 20-foot minimum side yard requirement from newly created lot lines, therefore, is in violation of Par. 1 of Sect. 2-307 of the Zoning Ordinance. The property is located at 3712 and 3716 Prosperity Ave. on approx. 42,000 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3((6))13A; 59-1((5))12A.

Mr. Gregg Britto, attorney with the law firm of Shapiro and Burson in Fairfax, representing Nations Banc Mortgage Corporation Successor By Merger with Boatman's National Mortgage, Inc., as servicing agent for First Nationwide, the holder of a first priority deed of trust against 3712 and 3716 Prosperity Avenue, came forward. He requested a deferral for approximately ninety (90) days to allow Nations Banc to pursue its application for a variance from the 20-foot side lot line requirements as imposed by the Zoning Ordinance. He said that the application was filed on September 29, 1997, with an anticipated hearing date within ninety (90) days. He felt the variance would be the best way to resolve the situation.

Vice Chairman Ribble asked William Shoup if he had anything to say on the application. Mr. Shoup said that the Zoning Administrator's office has mixed reaction and they felt that the best way was to pursue a variance. Mr. Shoup said that there were concerns from nearby property owners.

Vice Chairman Ribble asked that anyone wishing to speaking to the deferral should step to the podium.

Barney Goodman, an attorney representing Prosperity, L.L.C., owner of adjoining property said that under Code 15.1-496, he believed that Nations Banc, as the first priority deed-of-trust holder, did not have standing to pursue a variance and would have to be owner or tenant to pursue the variance. He urged the Board not to grant the deferral because another ninety (90) days in violation would have an impact on Prosperity L.L.C., which is adjacent.

Vice Chairman Ribble asked Mr. Goodman to identify who he believed was the owner of the property if Nations Banc is not. Mr. Goodman replied by saying that Lockwood Associates owns one parcel and Mr. and Mrs. Kelley and Lockwood Associates owns the other parcel. Mr. Goodman believed that Lockwood Associates and Mr. and Mrs. Kelley is in default on the mortgage loan that Nations Banc holds. Nations Banc started foreclosure proceedings against them and stopped. Prosperity L.L.C wants to move forward with the development of their property but the violation has an impact on them.

Vice Chairman Ribble asked Mr. Britto to explain where they were with the foreclosure. Mr. Britto said the foreclosure was on hold and once the variance is obtained Nations Banc would foreclose on the property. They would fix it up and place it on the market if they bought it back. He said that a broker's price opinion (BPO) was recently done on the property and that is one of the reasons why they did not file the variance on

time. Mr. Britto said that Nationsbanc wanted to see if the BPOs were of any value before pursuing the variance. Nationsbanc found out that the improvements would improve the value by \$137,000.

Mr. Hammack asked Mr. Britto how long the structure in violation has been on the property. Mr. Britto said he understood it to be since 1959. He said it came out of compliance in 1988 when the prior owner resubdivided the property which took it out of compliance with the Ordinance. He also said the plats filed with the resubdivision application did not include the location of the house and the subdivision was approved by the County.

Mr. Hammack asked Mr. Goodman when did Prosperity, L. L. C. purchased the adjacent property, if they knew the structure was there, and could they have investigated to see if it was in compliance then. Mr. Goodman said the property was purchased in 1995 and that they knew that the structure was not in compliance. He said that the resubdivision was in 1988 and the plat did not show the house on it. He further stated that they had relied on the grading plan which was filed in 1990 that showed removal of the house.

Mr. Goodman said that the mortgage loan that Nationsbanc is a successor of and has interest on was not placed until 1991 and that there were public records that showed the house as removed.

Mr. Hammack asked if the house had not been removed when Prosperity L.L.C. bought the property and were they not aware of it. Mr. Goodman said yes, but there were plans on file that showed the removal and that is what Prosperity L.L.C. relied on. He said Nationsbanc does not have standing under the statute to pursue a variance.

Mr. Hammack asked who filed for the variance and Mr. Goodman said Mr. Britto gave him a copy and told him it was filed on September 29, 1997, which said Nationsbanc on the application. Mr. Hammack said the County Attorney's office looks at the affidavits and makes determinations whether the proper parties have filed, and if not properly filed, the staff would reject the application.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the affidavits are sent to the County Attorney's office for review and approval. She said she did not believe that the application was in staff's possession and referred the question to Mr. Shoup. Mr. Shoup verified that the application was submitted but that staff had not had a chance to look at it and that the application has not been officially accepted yet.

Mr. Britto said that the variance was filed on recommendation of staff. He stated that his client could foreclose and become the owner, but is reluctant to do that without some assurance that there will be no additional liability on Nationsbanc.

Mr. Hammack said someone recommended that Nationsbanc file a variance a long time ago. Mr. Britto said the initial letter was in error and was sent again in June. He said that his client wanted to do the broker's price opinion to see if there were any real value to the dwelling.

There was no one else to speak to the deferral and Vice Chairman Ribble closed the discussion regarding the deferral request.

Mr. Kelley made a motion to grant the deferral for ninety (90) days and asked staff to suggest a date. He said the Board does not make determination on whether a variance is accepted since it is up to the County Attorney's staff to determine an applicant's standing. He further stated that there is a matter almost routine where the Board usually grants one deferral in cases like these and that he believed the request was justified.

Mr. Shoup indicated that in consideration that the variance application had just been filed, and since it would take some time for it to be accepted and scheduled, it would not come before the Board until late January. He proposed a February 24, 1998, at 9:30 a.m. and the deferral was granted.

Mr. Goodman asked the Board if the hearing could be expedited if staff determines that the appellant have standing.

Mr. Kelley said that if the appellant had standing then they would probably want to have the case heard earlier.

Mr. Hammack said that if the appellants don't have standing the Board would have to wait for the report to return. He also said that the Board gets several appeals which should involve a variance or special permit request but because the statute requires an appeal be filed within 30 days, the appellants do not obtain an attorney and they find themselves before the Board that is when they determine they should have done something else. He said the Board routinely grant continuances or deferrals in order for the appellant to file proper application.

Mr. Shoup indicted that if it was determined that the appellant did not have standing to pursue the variance, the BZA would be advised of that fact and consideration could then be given to rescheduling the appeal to an earlier date. It was agreed that such action should be taken.

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9:00 A.M. VOLNEY F. & BELVA J. WARNER, VC 97-D-070, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.25 ft. from street line of a corner lot. The property is located at 6724 Danforth St. on approx. 18,362 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4((17))152.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John Dewey, 6274 Danforth Street, McLean, replied that it was.

Susan Langdon, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a greenhouse addition 23.25 feet from one street line of a corner lot. A minimum front yard of 30 feet is required in the R-3 District; therefore, a variance of 6.75 feet was being requested. A previous variance was approved for the construction of a swimming pool and a fence.

Mr. Dewey reaffirmed that this is a difficult site, which creates a hardship. The property has a peninsular shape which has three front yards, no back yard, and a side yard which are occupied by a sewer easement. Mr. Dewey said the Warners have owned their property since 1965. They want to develop the property for their retirement. The greenhouse has become a key element to their recreation, hobby, and therapy. Because of the difficulty of the site, there was no opportunity or place to position the greenhouse without impinging on the setback line.

Vice Chairman Ribble asked if there were any questions for Mr. Dewey. He also called for speakers in support or opposition. There was no response and the public hearing was closed.

Mr. Kelley made a motion to grant VC 97-D-070 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report of the revised Development Conditions dated September 30, 1997.

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

VOLNEY F. & BELVA J. WARNER, VC 97-D-070, Application. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.25 ft. from street line of a corner lot. The property is located at 6724 Danforth St. on approx. 18,362 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4((17))152, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the bylaws of 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 30, 1997; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the required standards for the granting of a Variance.
- 3. The applicant has lived there a long time and has done a responsible job with 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 a greenhouse addition shown on the plat prepared by Curtis D. Miller, dated May 1, 1997, revised July 15, 1997, and Walter C. Sampson, Jr., dated September 29, 1997, 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 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. DiGiulian 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 October 8, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 47, September 30, 1997 (Tape 1), Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH OF MERRIFIELD, SPA 87-P-073-2, Application. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-P-073 for church and related facilities and a child care center to permit continued use of a trailer. The property is located at 8122 Ransell Rd. on approx. 36,169 sq. ft. of land zoned R-3, HC. Providence District. Tax Map 49-4((1))36 and 49-4((3))8, 8A. (DEF. FROM 7/22/97 FOR NOTICES)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eddie Ward, 7403 Adams Park Court, Annandale, Trustee of First Baptist Church of Merrifield, replied that it was.

Susan Langdon, Staff Coordinator, Special Permit and Variance gave staff's presentation as outlined in the staff report. The applicant requested a special permit amendment for a church and related facilities and a child care center to permit continued use of a trailer for another five-year term. Staff recommends approval of the application subject to the proposed development conditions contained in the staff report.

Mr. Ward said the church wants to continue use of the trailer for the church educational programs because the basement is being used for a child care center. He said the trailer has been used to carry out the church's educational programs for the past five years. Mr. Ward said the church provides programs for youths such as tutoring for the junior and senior high school students, up to twenty students weekly. He said there are weekly youth activities from an educational point, which not only aims to develop the youths in the church, but also provides a means for keeping them off the street. Mr. Ward also said senior citizens use the trailer for weekly fellowship and Christian development.

Vice Chairman Ribble asked Mr. Ward if he agrees with the conditions as contained in the staff report and Mr. Ward replied that he did.

Vice Chairman Ribble asked if there was anyone to speak in support or opposition of the application. There was no response and the public hearing was closed.

Mr. Hammack asked staff if there had been any changes in the Development Conditions since the application was last reviewed. Mr. Ward responded by saying that the only change that has occurred is along the Porter Road corridor, which has been developed for commercial use. Ms. Langdon responded to Mr. Hammack's question by saying that the conditions have been brought forward from the previous approval.

Mr. Dively made a motion to approve SPA 87-P-073-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 15, 1997.

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

FIRST BAPTIST CHURCH OF MERRIFIELD, SPA 87-P-073-2, Application. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-P-073 for church and related facilities and a child care center to permit continued use of a trailer. The property is located at 8122 Ransell Rd. on approx. 36,169 sq. ft. of land zoned R-3, HC. Providence District. Tax Map 49-4((1))36 and 49-4((3))8, 8A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the bylaws of 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 30, 1997; and

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

1. The applicant is the owner of the land.
2. The trailer is for a good use.

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 Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Richard W. Long, dated April, 1987, and approved with this application, as qualified by these development conditions.*
2. 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.*
3. 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.*
4. The maximum number of seats/worshippers in the main worship area shall be 180.*
5. The maximum number of children in the child care center shall be fifty-seven (57).
6. Fifty-six (56) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site in the location shown on the special permit plat.
7. The hours of operation of the child care center shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.*
8. The use of the trailer shall be limited to five (5) years from the final approval date of this special permit amendment application.*
9. The transitional screening and barrier requirements shall be waived until Lots 37 and 9 develop residentially. Should Lots 37 and 9 develop with single family detached dwellings, a solid wood fence shall be erected along the eastern lot line.*

10. All access to the child care center shall be from Porter Road.*
11. As portions of the existing church and trailer are located within 60 to 200 feet from the centerline of Gallows Road, each shall comply with the guidelines for the acoustical treatment of commercial structures located within the highway noise impact zone with levels between 70 and 75 dBA Ldn, as determined feasible by DEM. Further, as portions of the existing church and trailer are located within 200 to 620 feet from the centerline of Gallows Road, each shall comply with the guidelines for acoustical treatment of commercial structures located within the highway noise impact zone with levels between 65 and 70 dBA Ldn, as determined feasible by DEM.*

That portion of the existing building to be used for child care purposes shall meet the 45 dBA Ldn interior noise standard as the proposed child care facility is considered noise sensitive.*

The following criteria shall apply to the existing building:

- ▶ Exterior walls shall have a laboratory sound transmission class (STC) of at least 45.*
- ▶ Doors and windows shall have a laboratory sound transmission class (STC) of at least 37. If "windows" function as walls, then they should have the STC specified for exterior walls.*
- ▶ Adequate measures to seal and caulk between surfaces shall be provided.*

The outdoor recreation area shall meet the 65 dBA Ldn outdoor noise standard based on the following criteria:

- ▶ To achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as architecturally solid fencing, shall be provided for those outdoor recreation areas which are unshielded by topography or built structures. The method employed must be of sufficient height to adequately shield the impacted area from the source of the noise.*

12. If a waiver of the dustless surface requirement is approved by the Department of Environmental Management (DEM), the gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, DEM.

These development conditions incorporate and supersede all previous development conditions. The previous conditions are marked 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.

The special permit use shall become established with the Board of Zoning Appeals approval of this amendment.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. DiGiulian 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 October 8, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JOAN K. & HARRISON G. WEHNER, JR., VC 97-D-027 Application. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lots 2 and 3 having a lot width of 1.0 ft. The property is located at 9601 Georgetown Pi. on approx. 8.24 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))72D. (RECONSIDERATION GRANTED ON 6/10/97)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Grayson Hanes, the applicant's attorney, reaffirmed the affidavit.

Mr. Hanes said the case was brought before the Board in June of 1997, and that he came before the Board with a request that the matter be reconsidered so the issues raised could be addressed. He said some members of the Board were not satisfied with the issues. He requested a deferral until all members of the Board could hear the case. Mr. Hanes suggested that the case be heard and the decision deferred until the members who were absent had a chance to view the tape of the hearing and then render a decision at a later date.

Mr. Dively said that even though all the members of the Board were not present at this meeting, there was no guarantee that all seven members would be present at any given meeting.

Mr. Kelley supported the deferral but stated that he did not want to set a precedent where votes were deferred and obligate Board members to watch the tape.

Mr. Dively suggested having the hearing as scheduled and then deferring the vote to another time when all the Board members were present.

Vice Chairman Ribble asked if there was anyone wishing to speak to the deferral.

Don McCoy, 9601 Georgetown Pike, Great Falls, spoke to the deferral by saying that the hearing should be held as scheduled.

Mr. Kelley made a substitute motion to hear the case as scheduled and defer decision to November 11, 1997, at 9:00 a.m.

Susan Langdon, Staff Coordinator, Special Permit and Variance Branch, presented the staff report. The applicant requested a variance to permit subdivision of one lot into three lots with proposed Lots 2 and 3 having width of 1 foot each. A minimum lot width of 200 feet is required in the R-E District.

Mr. Hanes said Mr. and Mrs. Wehner have lived in the community for over 30 years and have acquired their property over a period of time. He said the property contains 8.2 acres, and under the Zoning Ordinance, a property owner in an R-E zone is entitled to four lots as far as density is concerned. Mr. Hanes said that in order to develop four lots, a public street of 50 feet would be necessary from Georgetown Pike. Mr. Hanes further stated that for a public street to be accepted there would have to be three users. He said the property consists of the home and an accessory home built in accordance with a special permit granted by the Board in 1993. Mr. Hanes also said that in creating a four-lot subdivision, the 50-foot right of way would destroy the vineyard.

Mr. Hanes said that to develop the four-lot subdivision, the building setback on the existing structure, which is the home of the Wehners, would create a strange configured lot and the barn would have to be separated from the house. He said the Wehners have created 2 acre lots and the remaining lot of over 4 acres would allow the property to remain in its natural state. For the 4-lot subdivision, a requirement of 20 feet dedication along Georgetown Pike with a deceleration lane in accordance with Virginia Department of Transportation (VDOT) standards would have to be constructed. He said to destroy the trees and put three street lights along Georgetown Pike would create a hardship for the Wehners. Mr. Hanes quoted the preamble to the R-E District. He said the Wehners bought property as it became available but that they did not create the hardship. Mr. Hanes submitted a copy of the Ordinance amendment, which would have allowed pipestem lots by right, that was previously rejected, letters of support, and a copy of Mr. Wehner's original presentation.

Vice Chairman Ribble called for anyone speaking in support of the application.

Ruth Carver, 102 Jefferson Run Road, Great Falls, Virginia, member of the Executive Committee of the Great Falls Citizens Association spoke on the behalf of the Association. She said the Association approves of the Wehner's application because the density in the community is kept at a low level. She said Mr. McCoy has not approached the citizens' Association with his objection. She said if the application is rejected and the Wehners are forced to develop four lots, there would be wider lanes and another public street on Georgetown Pike. There would also be four houses with children instead of three, and this would impact the school system and traffic on Georgetown Pike.

John Colby, 609 Deerfield Pond Court, Great Falls, and Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association and member of the Executive Committee, said there is not enough frontage to develop a small subdivision by right without a State road, which is a hardship. He said there is a hardship of meeting the Public Facilities Manual standards that is excessive for such subdivision of this nature. He said this presents a hardship for the community because this represents a State-maintained road used as a driveway functioning for three lots, which should be a pipestem the Public Facilities Manual requirements.

Jonathan Wehner, son of the appellants, 9601 Georgetown Pike, stated that his parents are trying to get three lots in order to preserve the land and the landscape which they have developed themselves and to retain their home to live in through their retirement.

Vice Chairman Ribble called for speakers in opposition.

Nancy Leeses, 9608 Georgetown Pike, said she has lived on her property since 1962. She presented letters from neighbors who opposed the application.

Carl Matthew Dethler, of 740 Lay Mill Road, presented a letter for Lucy Vallar-House, owner of 740 Lay Mill Road. She has lived in Great Falls since 1937. She stated in her letter that she has rejected several offers from developers who have tried to purchase her property in order to build houses.

Haussien Gold, 9616 Georgetown Pike, Great Falls, Virginia, said he strongly opposed the Wehner's application because it will impact his quality of life. He said he moved to the Great Falls area five years ago mainly because of its reputation. He said he wanted his children to be able to have a nice park where they can have fun. Mr. Gold said that it is not economically possible to develop the lots.

Mr. Dively asked Mr. Gold if his preference was that the property not be developed and the speaker replied yes.

Jennifer Gowdy, 746 Lay Mill Road, opposed the application because the granting of a variance would compromise the character of Great Falls. Ms. Gowdy also said that the Wehners' property is essentially a moneymaker. She said there is a milk house, a barn, a log cabin, and an accessory dwelling that have been leased out. She said the Wehners have five moneymakers on their property. She said the Wehners requested a special permit to build a detached accessory dwelling unit to be used for extended family members, which is now leased out to non family members. Ms. Gowdy said there is a 15-foot right of way off Georgetown Pike which is used for the accessory dwelling unit which contradicts the conditions of the special permit. Ms. Gowdy said the Wehners own Lots 72C and 72B which is one 5-acre lot and a private road divided into two lots through a grandfathered clause.

Edmond Murdock, 67 Old Mine Ridge Road, Great Falls, said he opposed any additional waivers that permit property owners to put more automobiles, driveways, and pipestems to the Pike.

Mr. Dively asked Mr. Murdock if he would be opposed to the Wehners if they chose to develop three lots instead of four. Mr. Murdock asked why was it necessary for them to change the existing zoning. He said the neighbors do not want any more entries onto the road network that currently exists.

Dotty Defrancia, 9621 Georgetown Pike, Great Falls, opposed the application because of the pipestemming it could create on Georgetown Pike. She said that if a variance is granted, it would set a precedent which would evolve into a higher density subdivision where it would not be economically feasible to build a public road.

Mr. Dively asked Ms. Defrancia if anyone had numbers to support the feasibility. Ms. Defrancia said she had numbers from developers who informed her that it would not be economically feasible to develop a public road. She said it would cost \$175,000 to build the road to State standards. She also said that part of the property would have to be dedicated to the State.

Kathy Milkes said she has owned 5 ½ acres for the past 27 years in the neighborhood of the Wehners property. She said the total people in opposition included 13 property owners who owned 128 acres comprised of 190 years of living in the Great Falls area.

Donald McCoy, 9609 Georgetown Pike, presented a letter of opposition from Denise Gregg. He said the Wehners have a master plan to develop a profitable enterprise, since every structure with the exception of their home yields a cash flow. Mr. McCoy urged the Board to reject the Wehners' request for a variance as was the decision on June 3, 1997.

There was no one else to speak in opposition and Vice Chairman called Mr. Hanes back to the podium.

In his rebuttal, Mr. Hanes said the speakers did not believe that four lots could be built because it would create an undue hardship. He said the Wehners think they can do a four-lot subdivision even though it is a hardship. Mr. Hanes said to putting the road in would destroy the agricultural productivity and the trees with the grading, the storm water management pond, and the setback requirements. He also stated that the other parcel is owned by Sterling Worth.

Mr. Hammack asked Mr. Hanes if the Wehners are running out of accessory dwelling units. Mr. Hanes responded by saying they are and this is allowed under the permit.

Mr. Pammel said that on properties where ingress/egress exists, it creates legal confrontations because of activities taking place on the other properties that the owners do not agree with. He also said that to provide access to properties to the rear of access easements is not good practice.

Mr. Kelley moved to defer the case until November 11, 1997, at 9:00 A.M. for decision only, with each side having five minutes to give a summary of the hearing. The motion passed with a vote of 5-0.

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The Board recessed at 11:08 a.m. and reconvened at 11:15 a.m.

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Page 52, September 30, 1997 (Tape 1), Scheduled case of:

9:00 A.M. ST. ANDREW LUTHERAN CHURCH, SPA 79-S-351-4, Application. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 for church and related facilities and nursery school to permit building additions, site modifications and increase in seating capacity. The property is located at 14640 Soucy Pl. on approx. 2.56 ac. of land zoned R-3, WS. Sully District. Tax Map 54-1((6))1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A.

Vice Chairman Ribbie called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mack Arnold, agent for the applicant, reaffirmed the affidavit.

Susan Langdon, Staff Coordinator, Special Permit and Variance Branch, gave staff 's presentation as outlined in the staff report. The applicant requested approval of a special permit amendment for building additions and

an additional 23 parking spaces. The applicant proposed to construct two additions. One, a 3,450 square foot addition to the sanctuary, which would be one story and be located 39 feet from the front lot line on Cranoak Street. The second addition would be used for classroom space of 11,670 square feet and be three stories in height. Staff recommends denial of the application for reasons outlined in the staff report.

Mr. Pammel said that the applicant has complied with the standards set forth in the Ordinance and that they meet the Floor Area Ratio (FAR). In response to Mr. Pammel's question, Ms. Langdon said the application falls right under the maximum allowable FAR and meets most of the regulations of the Zoning Ordinance. She added that the church is closer to Braddock Road due to the road being widened.

Jane Kelsey, Chief, Special Permit and Variance Branch, clarified that the applicant meets the bulk regulations of the Zoning Ordinance, not the standards for a special permit use as contained in the Zoning Ordinance. She said in staff's evaluation, staff did not believe that the applicant met these standards.

Mr. Hammack asked staff if the existing church is only .096 FAR based on the 10,000 square feet and staff said yes. Ms. Landgon said the addition for the classroom is three stories in height which has been considered part of the FAR.

There were no further questions of staff and Mr. Arnold approached the podium to present the application before the Board.

Mr. Arnold said the church has been in existence since 1979. He said the church wants to expand and add a one-story addition to the sanctuary to raise the total number of seats to 370, and also to add classrooms that will be two and one-half stories. He said the addition has been designed with the intent to utilize the existing topography. Mr. Arnold presented photographs showing the existing site and proposed plans to the Board. He said the proposed architectural structure is compatible with the existing architecture. Mr. Arnold said the addition would be a few inches lower than the sanctuary, but visual impact is no greater. He said the noise issue raised in the staff report is generated by the traffic on Braddock Road. This would be resolved by constructing a solid wood fence to shield the playground from the Braddock Road noise.

Mr. Arnold that said on September 25, 1997, the Department of Environmental Management (DEM) granted the church a waiver for the required street lights. He said there are objective standards set forth in the Zoning Ordinance and each has been met and exceeded by the church. Mr. Arnold said the minimum lot size required is 10,500 square feet, the church has 2.56 acres; the required lot width is 105 feet, the church has 215 feet by 380 feet by 404 feet; the building height allows up to 60 feet, the applicant is proposing 38 feet which is within the requirement. Mr. Arnold said the front yard requirement is 30 feet minimum in regards to Braddock Road, 20 feet of which remains due to a condemnation action. Mr. Arnold said the applicant has met all the objective standards set by the Board of Supervisors, Planning Commission, and the staff. He said based on the topography, the building is no higher than nearby homes, and the visual effects are no greater than many nearby uses, which have visual effects greater than what is proposed.

Mr. Hammack asked Mr. Arnold if he had read the proposed development conditions and whether he agreed or disagreed with them. Mr. Arnold said that he disagreed with the signs. He said the only reason the signs are nonconforming is because of the condemnation along Braddock Road that is moved closer to the street. Mr. Arnold asked that the signs be allowed to continue as located

There were no other questions of Mr. Arnold and Vice Chairman Ribble asked for speakers in support of the application.

Linn Opperbecke, Pastor of St. Andrew, 5113 Old Dale Road, Centreville, said the church has been in Centreville for approximately 18 years and he has been there for almost 16 years. He said the church is a community church with 90 percent of its members residing in Centreville. He said because of the FAR, the expansion requested is all the church can build. Mr. Opperbecke said there are 250 families at St. Andrew and the sanctuary sits 270. The church is overcrowded Sunday mornings and holidays. The expansion is expected to alleviate the overcrowding. He said the children are transported to Cub Run Elementary on Sundays where they meet for Sunday school. The expansion would enable them to have the children at the

church. He said this will put a cap on the growth of the church. Mr. Opperbecke said with the addition, the church hopes to provide community space for the various community activities that take place there.

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

Mr. Hammack moved to approve SPA 79-S-351-4 for reasons noted in the Resolution and in accordance with the proposed development conditions of the staff report dated September 23, 1997. He also noted that proposed Development Condition Number 13 be deleted and the final conditions to be renumbered.

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

ST. ANDREW LUTHERAN CHURCH, SPA 79-S-351-4, Application. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 for church and related facilities and nursery school to permit building additions, site modifications and increase in seating capacity. The property is located at 14640 Soucy Pl. on approx. 2.56 ac. of land zoned R-3, WS. Sully District. Tax Map 54-1((6))1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the bylaws of 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 30, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has presented a well-planned application.
3. The application meets the standards.
4. The application is under the maximum FAR.
5. The bulk of the construction faces Braddock Road, which is a four lane divided road, and is in an area of intense growth.

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, 14640 Soucy Place 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 Robert Almirall, dated April 1997, revised May 1, 1997, 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 church shall be 370.
6. The maximum daily enrollment in the nursery school shall be limited to ninety-five (95) children.*
7. The hours of operation for the nursery school shall be limited to Monday through Friday, 9:00 a.m. to 3:30 p.m.*
8. The maximum number of children permitted in the outdoor recreational area at any one time shall be forty (40). The outdoor recreational area of 4,000 square feet shall be provided. This area shall be enclosed with a 6-foot high solid board fence on the side of the playground facing Braddock Road. This fence shall meet current noise mitigation

standards as determined by DEM. The other sides of the playground shall be enclosed with either a board on board or a chain link fence.*

9. Transitional Screening 1 shall be provided along the Braddock Road lot line. The existing vegetation may be used to help satisfy this requirement, but shall be supplemented to meet the intent of the Transitional Screening 1 requirement as determined by the Urban Forestry Branch, DEM.

Transitional Screening 1 shall be provided along the Cranoke Street lot line.

The Transitional Screening requirement shall be modified along the Soucy Street lot line to allow a 10-foot wide yard, the one (1) row of evergreen trees shall be maintained and supplemented as needed.

10. Barrier H shall be provided along the eastern lot line. Existing vegetation may be used to satisfy this requirement, provided it is supplemented where necessary to meet the barrier requirement as determined by the Urban Forestry Branch.

The barrier requirement shall be waived along the northern, southern and western lot lines.*

11. A tree preservation and planting plan shall be submitted to the Urban Forestry Branch, DEM for review and approval at the time of site plan review and shall be implemented. This plan shall depict the limits of clearing as delineated on the special permit plat. The planting plan shall include parking lot landscaping as required by Article 13 of the Zoning Ordinance.
12. If a shared parking agreement or parking reduction is approved by the Department of Environmental Management (DEM), 96 parking spaces shall be provided. If a shared parking agreement or parking reduction is not approved by DEM, the number of seats in the sanctuary and/or the number of students in the school must be reduced to a number that can be supported by the parking spaces provided on site as determined by DEM. All parking for the uses shall be on site.
13. A sign permit shall be obtained for any signs to be located on this site.* The existing sign is less than ten (10) feet from the lot line and shall be relocated to meet Zoning Ordinance requirements.
14. Storm water Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Environmental Management. If the SWM/BMP structure is waived, all vegetation along the southwestern lot line depicted on the special permit plat to be removed for installation of the pond shall be preserved.

These development conditions incorporate and supersede all previous development conditions. Previous conditions are noted with an asterisk.

Page 56, September 30, 1997 (Tape 1), ST. ANDREW LUTHERAN CHURCH, SPA 79-S-351-4, continued from Page 55)

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 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. DiGiulian and Mr. McPherson were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 56, September 30, 1997 (Tape 1), Scheduled case of:

9:00 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-3, Application. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP-82-S-102 for country club to permit building addition. The property is located at 5110 Ox Rd. on approx. 150.92 ac. of land zoned R-C, WS. Springfield District. Tax Map 68-1((1))17, 18, 20.

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. Meaghan Keifer, planner with William H. Gordon Associates, 5110 Ox Road, replied that it was.

Brian Davis, Staff Coordinator with the Special Exception and Rezoning Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit amendment to the existing country club to allow a 750 square foot building addition to be used for dining purposes. The addition would be built by enclosing an existing patio on the west side of the country club house. No additional land disturbance is required. The applicant also requested a modification of transitional screening requirements along all lot lines and waiver of barrier requirements in favor of existing conditions.

Ms. Keifer said the request was for the enclosure of 750 square feet of the existing covered concrete patio. She said this will not constitute an expansion of membership or traffic, and no increase in pervious area, and the enclosed area will not be visible to adjacent properties and the Floor Area Ratio (FAR) on the site is .008.

A letter of support was presented to the Board. There were no speakers in support or opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to approve SPA 82-S-102-3 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 23, 1997.

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

COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-3, Application. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP-82-S-102 for country club to permit building addition. The property is located at 5110

Page 51, September 30, 1997 (Tape 1), COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-3, continued from Page 56)

Ox Rd. on approx. 150.92 ac. of land zoned R-C, WS. Springfield District. Tax Map 68-1((1))17, 18, 20, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the bylaws of 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 30, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant to permit enclosure of building.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 5110 Ox Road, (150.92 acres), and it is not transferable to other land.
2. This Special Permit is approved only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by William H. Gordon and Associates dated April 7, 1997 and revised through June 23, 1997.
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 the following:

Use of the clubhouse shall be limited to 7:00 a.m. to 10:30 p.m. on Sundays through Thursdays, and 7:00 a.m. to 1:00 a.m. on Fridays and Saturdays; occasional exceptions to these hours of operation shall be allowed to accommodate special functions. These functions shall not include the use of the lighted tennis courts and the special functions shall conclude by 1:30 a.m.

Use of the seasonally enclosed tennis courts shall be limited to 7:00 a.m. to midnight, seven days a week.

Use of the lighted outdoor tennis courts shall be limited to 7:00 a.m. to 10:00 p.m., seven days a week.

Use of the swimming pool and all golf course facilities shall be limited to hours between sunrise and sunset, seven days a week.

6. All lighting and noise shall be confined to the site.
7. There shall be a maximum of 329 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements as determined by DEM. All parking shall be on site.
8. The total membership shall not exceed 900 members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.
9. A fertilizer, herbicide, and pesticide management program shall be maintained for the 18 hole golf course in conjunction with the Department of Extension and Continuing Education. This program shall be designed to prevent excessive application of fertilizer, herbicide and other chemicals to protect water quality in the Popes Head Creek watershed.
10. Existing Best Management Practices (BMPs) and Storm water Management Ponds shall fulfill the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance as approved by the Director, DEM.
11. Existing vegetation along all lot lines shall fulfill the requirements of the Transitional Screening and the Barrier requirement shall be waived as approved by the Director, DEM.
12. Any proposed new lighting of the parking areas shall be in accordance with the following:
 - A. The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - B. The lights shall focus directly on the subject property.
 - C. Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for 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. DiGiulian and Mr. McPherson were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 1997. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. CENTREVILLE SHELL, A 1997-SU-021, Application. under Sect(s) 18-301 of the Zoning Ordinance. Determination that the addition of a decorative windmill and lighthouse on appellant's property is not in substantial conformance with approved Special Exception SE 92-Y-030 and therefore, such additions without Special Exception approval constitutes a violation of Par. 2 of Sect. 9-004 of the Zoning Ordinance. The property is located at 13401 Lee Hwy. on approx. 62,883 sq. ft. of land zoned C-8, WS. Sully District. Tax Map 55-3((3))39, 40, 41.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated September 22, 1997. At issue in the appeal were two structures which are located along Lee Highway frontage of the property at 13401 Lee Highway. There is a windmill approximately 16 feet in height and a lighthouse approximately 13 feet in height. The service station, quick service food store, and car wash were established on the property pursuant to the Board of Supervisor's approval of special exception, SE 92-Y-030, and related special exception, SE 92-Y-041, and proffered condition amendment, final development plan amendment, PCA FDPA 81-S-090-3. He said the issue in the appeal was whether the lighthouse and windmill structures are in substantial conformance with the special exception approval. He said permission was granted only for the purposes, structures, or uses presented on the approved plat.

Mr. Shoup said Condition 13 of the approved special exception required a landscape plan for the property which provided for a mixture of trees and shrubs to present an attractive Route 29 street frontage. He said the structures were not shown on the special exception plan and the area they occupied is designated as landscaped open space. Mr. Shoup said the Board of Supervisors modified the normal transitional and screening and barrier requirements in favor of the landscaping shown on the special exception plat required by Condition 13. He said that in order to be in conformance with the Zoning Ordinance, a modification must be consistent with and not materially alter the character of the approved development. Mr. Shoup said that since the structures are not consistent with the intent of Condition 13 which was to reinforce the visual appearance along the Route 29 frontage, and they were not shown on the special exception plat, the windmill and lighthouse are not in substantial conformance with the approval of the application. Therefore, they are violating the Zoning Ordinance. Mr. Shoup said that in order for the windmill and lighthouse to remain, approval of a special exception amendment would be required.

Mr. Dively asked Mr. Shoup where on the slippery slope would substantial conformance be defined and could he give examples of things that fall within substantial conformance guidelines. Mr. Kevin Guinaw, Chief, Proffer Interpretation, Application Acceptance Branch, responded by saying that in this particular case, if you look at the transitional screening yard or the landscaped open space along the frontage on Route 29, which was originally shown to include a storm water management pond and a sign, in addition to the landscaping, a minor modification which could be considered in substantial conformance might be relocating or reshaping the pond or relocating the sign with the keyword being "minor modifications" to that which was approved.

Mr. Dively and Mr. Guinaw discussed ornamental structure in order to come to an understanding of conformance.

Glen Silver, the appellant's attorney, represented the appellant and said he assisted the owners with the construction of the structures and attested that there are no large foundations or concrete. He said a common-sense approach to the case is necessary. Mr. Silver said the structures are ornamental and considered a landscape feature, which is defined in the Zoning Ordinance and allowed in the open space. He said the open-space definition states that within the open space one can have landscape, trees, shrubs, ornamental features, such as fountains, statues and things of that nature. Mr. Silver said there is nothing in the Ordinance to prevent a 16-foot statute from being placed in that area. He then referenced a letter from Supervisor Michael Frey in which he talked about the definition and accessory use of a structure. Mr. Silver said Supervisor Frey urged the BZA to allow the windmill and the lighthouse to remain.

Mr. Silver said the case came about as a matter of aesthetics. He said 1,400 citizens of Fairfax County who live in Clifton and Centreville support the windmill and lighthouse. Mr. Silver presented pictures of the Shell station showing the structures. He said the structures are a proper use as defined in the Zoning Ordinance. He said there is nothing in the special exception that prohibits the structures from being located where they now sit.

Mr. Hammack asked Mr. Silver if he would still say the structures are features if they were 25 feet tall instead of 10 or 12 feet? Mr. Silver said that was difficult question to answer with the way it was asked.

Vice Chairman Ribble asked if there was anyone wishing to speak to the appeal to come to the podium. Charlotte Cable, administrative assistant to Supervisor Michael Frey, read a statement into the record from Supervisor Frey. A copy of the statement is contained in the file. The statement supported the appellant's position.

Scott Brown, owner/operator of the Shell station, said the case came about because of a letter from Mr. Hart of the Western Fairfax Citizen Association (WFCA). Mr. Brown said members of the Association complained to Mr. Hart about the windmill and lighthouse. He said the Zoning Administrator decided that the station was not in conformance without a site inspection. Mr. Brown said Ms. Ghant of the WFCA said there was no community opposition and that Mr. Hunt misunderstood the conversation with her and both apologized.

Mr. Pammel asked Mr. Brown if he had considered a special exception and Mr. Brown said he had not. He said the Zoning Ordinance requirements did not require a special exception because the structures are landscape features in the open space section of the service station and not along Route 29 open space, which he thinks, conforms. Mr. Brown said people who signed the petition did not know that the structures existed until it was brought to light in the local newspaper. He said his customers have no complaints.

Mr. Pammel asked Mr. Brown when the structures were erected and he said January 1997.

Mr. Dively asked Mr. Shoup what it would cost to file a special exception amendment. Barbara Byron, Director, Zoning Evaluation Division, replied by saying a special exception amendment just under \$3,000. However, in this instance, a provision stipulates it will be half the price which is approximately \$1,500.

Mr. Brown said the BZA told him that he would need to have engineering and architectural drawings on the structures before a special exception application could be submitted. Ms. Byron responded by saying she believed what was said in the meeting was that the appellant could resubmit the previous drawings and that photographs of the objects would suffice.

In response to a request from Mr. Pammel, Mr. Shoup read the Zoning Ordinance definition of a sign. Mr. Pammel then indicated that it appeared to him that the Shell Station was in violation of the Sign Ordinance. Mr. Shoup indicated that staff considered that point and determined that the structures were not signs.

Mr. Shoup said inspectors went to the site and were shown by Mr. Brown that the structures have footings; therefore, he did not believe the structures are moveable. Mr. Shoup said even though the windmill and lighthouse are decorative structures, they must meet the criteria of the substantial conformance definition.

Mr. Guinaw said the appellant did not recognize that the special exception property and the definition listed in the Zoning Ordinance is limited by the special exception development conditions. He said the structures are not consistent with the intent of transitional screening and did not provide screening benefits. Mr. Guinaw further stated that transitional screening is intended by the Ordinance to establish buffers between noncompatible land uses between non-residential and residential uses. He said the structures do not provide screening benefits.

In rebuttal, Mr. Silver said there are no cement or footings around the structures and that they are sitting on a wood base. He said the open space special exception definition applies whether there is a use by right, a variance, or a special exception. He said the structures are along the Route 29 portion of the parcel and not along the transitional screening portion of the property, which is on the southwestern end of the property. Mr. Silver said the case calls for a "common-sense" approach.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel recommended that the BZA not substitute judgment for that of the Board of Supervisors, who approved the plan under the special exception. He said the structures draw attention to the appellant's business. He believes that they fall under the Sign Ordinance, and should have been placed on the special exception plat. He also said the plat should be returned to the Board of Supervisors for their approval because the BZA does not have the authority to approve the use and is beyond consideration as a minor element in the minor modification area. Therefore, Mr. Pammel moved that the Zoning Administrator's opinion be upheld. Mr. Kelley seconded the motion.

Mr. Hammack said he supported the statements made by Mr. Pammel, but for further reasoning, the special exception plat showed open spaced landscape. He further stated that the Board struggles to apply these ordinances sometimes, but that the Ordinance refers to ornamental objects such as fountain, statues, and other similar natural or artificial objects. He said he believed there are some qualifications as to what the Ordinance contemplates as ornamental object because it is preceded by flower beds, decorative planting, sidewalks, walkways, and lawns. He said that in applying this definition to the objects in question, it would stretch the intended meaning of the statue beyond what was contemplated.

Mr. Kelley said he supported Mr. Pammel's motion. He said the structures should be cited as a violation of the sign ordinance due to the language "direct attention to." He said attention is drawn to these structures. He further stated that he does not like the precedent that might be set if the Board overturns the Zoning Administrator's decision. He said he believes the placement of the structures is not acceptable.

There was a vote of 4-1 to uphold the Zoning Administrator's decision with Mr. Dively voting against it.

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Approval of July 8, 1997, and August 12, 1997, Minutes

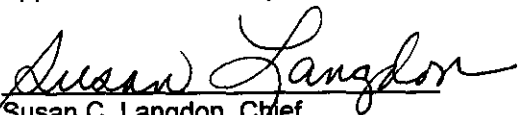
Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 5-0.


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As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Minutes by: Ann-Marie Wellington

Approved on: January 20, 1998


Susan C. Langdon, Chief
Special Permit and Variance Branch


John F. Ribble, III, Vice 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 7, 1997. 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. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 63, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SALVADOR R. PEREZ, SP 97-L-032, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.5 ft. from side lot line. Located at 7304 Charlotte St. on approx. 10,720 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3((2))(35)17.

Mr. McPherson made a motion to defer the application to December 2, 1997, at 9:00 A.M. as suggested by staff. Hearing no objection, the Chairman so ordered. Mr. Dively was not present and Mr. Kelley was absent from the meeting.

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Page 63, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. EDGAR H. AND JULIA C. SIBLEY, VC 97-P-069, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from rear lot line. Located at 3000 Miller Heights Rd. on approx. 29,838 sq. ft. of land zoned R-1(Cluster). Providence District. Tax Map 47-1((6))157A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edgar Henry Sibley, 3000 Miller Heights Road, Oakton, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested a variance of 10.6 feet in order to construct a room addition 14.4 feet from the rear lot line.

Mr. Sibley said the lot is dish shaped with the house sited deep on the lot leaving very little room for an extension. The applicant explained that the kitchen is relatively small and they would like to add an eating area in the location of the existing patio. In closing, Mr. Sibley said the lot slopes severely in the front with the house approximately 60 feet below the road. He noted there are no objections from the neighbors.

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

Mr. Ribble made a motion to grant the applicant's request for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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

EDGAR H. AND JULIA C. SIBLEY, VC 97-P-069, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from rear lot line. Located at 3000 Miller Heights Rd. on approx. 29,838 sq. ft. of land zoned R-1(Cluster). Providence District. Tax Map 47-1((6))157A. 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 7, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant met the nine standards required for the granting of a variance; in particular, the lot is odd shaped and the dwelling is sited to the rear of the lot, as explained by the applicant.
3. Parcel A to the rear is open space and will never be built upon.
4. The request will have no adverse impact on the neighbors.

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

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

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

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

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

1. This variance is approved for the location of a room addition shown on the plat prepared by Edward W. Dove, dated July 7, 1997, revised July 10, 1997, 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 5-0 with Mr. Dively not present for the vote. 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 October 15, 1997. This date shall be deemed to be the final approval date of this variance.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. RUSSELL AND SUSAN SHAPIRO BIKOFF, VC 97-D-073, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1((12))140.

9:00 A.M. RUSSELL AND SUSAN SHAPIRO BIKOFF, SP 97-D-034, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. from side lot line and stairs 9.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1((12))140.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Russell Bikoff, 1825 MacArthur Drive, McLean, Virginia, replied that it was.

Susan Johnson, Staff Coordinator with the Rezoning and Special Exception Branch, made staff's presentation as outlined in the staff report. She said a side yard of 15 feet is required in the R-2 District with a permitted extension of 5 feet for stairs; therefore, the amount of the error was 1.8 feet for the dwelling unit and 0.8 feet for the stairs. Ms. Johnson said the applicant was also requesting a 7.8 foot variance in order to construct an addition 7.2 feet from the side lot line.

Mr. Bikoff said the 36 foot wide house was built in 1979 on a lot only 67 feet wide and the house is sited off center on the lot. He said his family loves the neighborhood and they would like to remain in the neighborhood by increasing the living space in their house to accommodate their expanding family. Mr. Bikoff explained the two part request to the BZA and said the addition would be similar to others in the neighborhood. In closing, he said the proposed location is the only feasible location for the addition as the neighbor has a driveway easement to the north, to the east there is a County storm sewer, and the structure of the house and topography of the lot make it impractical to extend the house in those directions. Mr. Bikoff said even to construct the addition to the south would require that he relocate the neighbor's sanitary sewer pipe and easement.

A discussion took place between Mr. Hammack and the applicant regarding the proposed addition and how it will be attached to the house. Mr. Bikoff explained the difference in the design of the existing house as opposed to the design of the house with the proposed addition.

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

Mr. Hammack made a motion to approve the applicant's request for the reasons noted in the Resolution

subject to the Development Conditions contained in the staff report.

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

RUSSELL AND SUSAN SHAPIRO BIKOFF, SP 97-D-034, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. from side lot line and stairs 9.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1((12))140. 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 7, 1997; 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 dwelling and the stairs shown on the plat prepared by S. Ania Shapiro, dated June 15, 1997, submitted with this application and is not transferable to other land.

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

Mr. McPherson seconded the motion which carried by a vote of 5-0-1 with Mr. Dively abstaining. 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 October 15, 1997. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant the variance for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RUSSELL AND SUSAN SHAPIRO BIKOFF, VC 97-D-073, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1((12))140.
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 7, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for the granting of a variance.
3. The narrowness of the lot and the easements that extend across the front and the back of the property are constraints as to what the applicant can do on the property and justify the request.
4. The applicant could not construct what is needed elsewhere on the property and the setback is reasonable at 7.2 feet.
5. The request 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 of the addition shown on the plat prepared by S. Ania Shapiro, dated June 15, 1997, 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 5-0-1 with Mr. Dively abstaining. 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 October 15, 1997. This date shall be deemed to be the final approval date of this variance.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MAUREEN G. WEAVER, VC 97-D-072, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 0.4 ft. from side lot line. Located at 1940 Burfoot St. on approx. 10,075 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1((2))136.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maureen G. Weaver, 1940 Burfoot Street, Falls Church, Virginia, replied that it was.

Susan Johnson, Staff Coordinator with the Rezoning and Special Exception Branch, made staff's

presentation as outlined in the staff report. The applicant requested a 9.6 foot variance in order to construct a carport 0.4 feet from the side lot line.

Ms. Weaver said she would like to construct an open carport over the existing driveway to protect her vehicle from inclement weather. She explained that the lot is exceptionally narrow and added that there is no other feasible location for the construction.

Mr. Dively asked the applicant if the size of the carport could be reduced since the addition would be very close to the lot line, which concerned him. Ms. Weaver deferred to her contractor.

Don Cook, contractor for the applicant, explained that if the size of the carport was reduced it would not meet the applicant's purpose for the carport. He added that there are air units on the side of the house which require that the carport be widened to accommodate parking a vehicle on the pad without having to step off onto the ground.

Mr. Hammack asked if there was any other location on the lot that the carport could be constructed. Ms. Weaver said the other locations would be either in the front or rear yard due to the narrowness of the lot. Mr. Hammack pointed out that the applicant's lot is very similar to the other lots in the neighborhood, although it may be more narrow than some lots. He expressed concern with the problems in maintaining the proposed structure without having to trespass on the neighbor's property due to the close proximity of the addition to the shared lot line.

Mr. McPherson said he was also concerned with the location of the proposed structure. He asked if it would be possible to relocate the air unit in order to reduce the size of the carport. Ms. Weaver said it might be possible to relocate the unit to the other side of the house, but she did not know what that would involve.

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

Mr. Pammel made a motion to deny VC 97-D-072 for the reasons noted in the Resolution.

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

MAUREEN G. WEAVER, VC 97-D-072, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 0.4 ft. from side lot line. Located at 1940 Burfoot St. on approx. 10,075 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1((2))136. 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 7, 1997; and

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

1. The applicant is the owner of the land.
2. The carport would be much too close to the shared lot line.
3. In looking at the plat the obvious solution would be a free-standing garage in the rear yard where there is more than adequate yard and the structure could probably be designed to be an intricate element of the entire property compatible with the existing house.

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 5-0. Mr. Ribble was not present for the vote. 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 October 15, 1997.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JESS & NILGUN JOHNSTON, VC 97-L-071, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence to remain higher than 4.0 ft. in front yard of a corner lot. Located at 8114 Keeler St. on approx. 11,679 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1((4))120.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jess Johnston, 8114 Keeler Street, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested variances of 2.7 and 2.2 feet to allow two segments of a fence located in a front yard of a corner lot to remain 6.7 and 6.2 feet high.

Mr. Johnston said the house is sited at a 45 degree angle on the lot and sits too far back to the left of the lot alleviating the opportunity for the construction of a garage, carport, or a fair size rear yard as compared to the vast majority of the homes in the development. He added that the house is only 1,500 square feet with no storage area, thus he built two 10 x 12 sheds in the rear corner of the lot leaving a small rear yard. Mr.

Johnston said he has made many improvements to the property with one being the fence, which he discussed with all his neighbors, including the complainant, prior to construction. He pointed out that the fence was constructed four years ago and added that this application was the result of a complaint he filed against his neighbor's barking dog. Mr. Johnston said upon learning the fence was in violation he invited the zoning inspector to his property and following that inspection he reduced the fence height as directed to by the inspector. He submitted letters in support of the fence from eighteen people, twelve contiguous property owners excluding the complainant.

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

Mr. McPherson made a motion to grant VC 97-L-071 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

Mr. Dively said he has been troubled by the definition of "good faith", but he believed this was a paradigm example of good faith. The applicant testified that he called the zoning office and invited them to visit his property to determine if there were any existing violations, and he believed this action was the definition of good faith.

Mr. Hammack noted the applicant's fence is only slightly higher than the neighbor's fence.

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

JESS & NILGUN JOHNSTON, VC 97-L-071, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence to remain higher than 4.0 ft. in front yard of a corner lot. Located at 8114 Keeler St. on approx. 11,679 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1((4))120. 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 7, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has shown good faith by making reductions in the fence height where it was indicated that he should do so.
3. The fence has been on the property for quite some time without a complaint, which is important.
4. The request is reasonable and provides appropriate security for his property.
5. The fence is attractive and well-maintained.
6. The applicant has met the nine required standards for the granting of the variance.
7. The findings of fact reflect the comments contained in the staff report.
8. The applicant's fence is only slightly higher than the neighbor's 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 fences shown on the plat prepared by Kenneth W. White, dated May 16, 1997, 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. Dively and Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. 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 October 15, 1997. This date shall be deemed to be the final approval date of this variance.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BENJAMIN E. BASHAM, VC 97-B-067, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line such that side yards total 20.8 ft. Located at 10022 Eastlake Dr. on approx. 11,774 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4((6))841.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin Basham, 10022 Eastlake Drive, Fairfax City, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested variances of 3 feet and 3.2 feet in order to construct a two-car attached garage addition 5 feet from the side lot line.

Mr. Basham said they would like to extend an existing carport into a double garage so their two vehicles will

be protected from inclement weather and vandalism. He explained that the proposed location is the only feasible place for the garage due to the topography of the lot. Mr. Basham said there were similar garages in the neighborhood and there are no objections from the neighbors.

Mr. Hammack asked if the roof line would be extended and the applicant replied that was correct. Mr. Basham explained that the little "jut out" shown on the plat was part of the existing carport and contained a bathroom.

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

Mr. Hammack made a motion to grant VC 97-B-067 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

Mr. Pammel noted that the applicant's lot has an unusually narrow frontage as it is only 70 plus or minus feet at the building line with the lot lines converging toward Eastlake Drive.

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

BENJAMIN E. BASHAM, VC 97-B-067, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line such that side yards total 20.8 ft. Located at 10022 Eastlake Dr. on approx. 11,774 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4((6))841. 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 7, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the narrowness of the lot and the topographic conditions on the property preclude construction of the addition elsewhere on the lot.
3. The lot has an unusual frontage as the building line is only plus or minus 70 feet. The lot lines converge toward Eastlake Drive creating a narrow 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 an attached garage shown on the plat prepared by Harold A. Logan, dated February 16, 1994, recertified by Gilbert M. Glaubinger on July 10, 1997, 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. 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 October 15, 1997. This date shall be deemed to be the final approval date of this variance.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:30 A.M. SHIRIN KAMIAB & HOSSEIN ALAVI, A 1997-SU-023, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 14705 Truitt Farm Dr. on approx 1,595 sq. ft. of land zoned PDH-4. Sully District. Tax Map 54-1((6))(8)39.

Mr. Pammel said in reading the staff report it appeared that the appellants were fully aware of the request they were making since staff had discussed it with them to be sure that they wanted to withdraw their application; therefore, he moved to accept the withdrawal as requested by the appellants. Mr. Dively and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. Kelley was absent from the meeting.

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Page _____, October 7, 1997, (Tape 1), Scheduled case of:

9:30 A.M. J.L. TREE SERVICE APPEAL, A 1997-PR-015, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the minor site plan and Non-Residential Use Permit (Non-RUP) for the appellants' storage use have expired and that the continued of mulch, wood, company vehicles and equipment on the property without a valid Non-RUP is in violation of Zoning Ordinance provisions. Located at 3120 Spring St. on approx. 190,689 sq. ft. of land zoned I-5. Providence District. Tax Map 48-3((1))25. (DEF. FROM 8/12/97)

William Shoup, Deputy Zoning Administrator, said the site plan has now been approved and the appellant has indicated his intent to follow through on conditions of the site plan in order to bring the property into compliance; therefore, staff supported a short deferral and suggested the morning of December 2, 1997. Mr. McPherson moved to grant the appellant's request for a deferral and accepted staff's suggested date. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. Kelley absent from the meeting.

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Page _____, October 7, 1997, (Tape 1), Action Item:

Intent to Defer
Appeal A 96-L-054, George Kyriacou

Paul Mengel, attorney for the appellant, came forward and requested a deferral of the appeal. William Shoup, Deputy Zoning Administrator, referenced staff's memorandum dated September 29, 1997, which noted that the appeal has been deferred several times in order to allow the appellant an opportunity to pursue a rezoning application in order to resolve the issue. He added that the rezoning application is scheduled for November 13, 1997, before the Planning Commission and staff anticipated that it will go to the Board of Supervisors in mid-January 1998. Although the rezoning application is on track, Mr. Shoup said there have been significant delays in processing the rezoning as staff indicated in their memorandum. Based on those delays and the objections raised by one speaker the last time the appellant appeared before the BZA, staff could not support the appellant's request for a deferral.

Mr. Mengel said the appellant has been cited for displaying marble and tile in a particular building, which is not allowed as a show room use. He said this was the first rezoning application that he had processed and unfortunately had made the mistake of filing the application at the end of 1996, which caused delays in accepting the application. Following meetings with staff relating to the rezoning application, Mr. Mengel said it became apparent that the rezoning application needed to be modified. He added that the appellant is anxious to resolve the issue. The Planning Commission public hearing is scheduled for November 13, 1997.

Mr. Hammack said it appeared the appellant was actively pursuing the rezoning application and he believed the appellant should be given the opportunity to complete the process. He moved that the BZA issue an intent to defer the appeal from the scheduled date of October 28, 1997, to a date in January 1998. Mr. McPherson seconded the motion. Mr. Shoup suggested February 17, 1998, to allow the Board of Supervisors ample time to hear the rezoning application. The motion carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mr. Kelley was absent from the meeting.

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Page _____, October 7, 1997, (Tape 1), Action Item:

Approval of September 30, 1997 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 5-0 with Mr. Ribble not present for the vote. Mr. Kelley was absent from the meeting.

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Page _____, October 7, 1997, (Tape 1), Action Item:

Approval of Revised Plats for Le Ngoc Tien and Le Ngoc Tri, VC 97-B-062

Mr. Pammel said it appeared the revised plat was in order and moved that the Board accept the plat and approve the Resolution for VC 97-B-062. Mr. McPherson seconded the motion with Mr. Ribble not present for the vote. Mr. Kelley was absent from the meeting.

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Page _____, October 7, 1997, (Tape 1), Information Item:

Golf Park, Inc.

Mr. Pammel called the BZA's attention to the information item regarding Golf Park, Inc., Thoburn Limited Partnership, wherein staff has indicated that they have conducted the site inspection as requested by the BZA and have found deficiencies. He said he believed the only way the BZA was going to be able to resolve these issues was to bring the applicant before the BZA and ask him to respond to the cited violations. Mr. Pammel said he would prefer not to issue a "Show Cause", but that he would like to invite the applicant to appear at the next available BZA hearing. Mr. Dively asked if the applicant could refuse to accept the BZA's "invitation" to appear at the hearing. Mr. Pammel said he would put the request in the form of a directive. Chairman DiGiulian said he would like to be present for the discussion and asked if it could be scheduled after October 21st. Mr. Pammel agreed.

Mr. Hammack said the zoning inspector has issued a Notice of Violation noting a compliance date of thirty (30) days from date of receipt of letter and he believed the "ball" was in Mr. Thoburn's court either to correct the violations or file an appeal. Mr. Dively expressed concern with the applicant having to meet the notice requirements as set forth in the Zoning Ordinance. Mr. Pammel said perhaps staff could advise the BZA after October 21st as to the status of the violations and at that time the BZA could take the appropriate action.

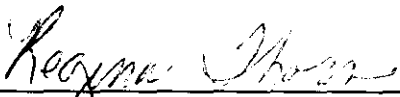
Mr. Dively asked for a clarification as to what was involved in the "Show Cause" process. Mr. Pammel explained that when an applicant fails to comply with the conditions imposed by the BZA a "Show Cause" public hearing is scheduled to give the applicant an opportunity to explain the lack of compliance and to show why the application should not be revoked. Mr. Dively said it appeared to be the appropriate vehicle and suggested that the BZA wait approximately two weeks to determine if a "Show Cause" is appropriate. Mr. Pammel agreed.

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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: Betsy S. Hurtt

Approved on: November 11, 1997



Regina Thorn, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 14, 1997. The following Board Members were present: Robert Dively; Paul Hammack; Robert Kelley; and, John Ribble. The members who were absent: John DiGiulian; Timothy McPherson; and James Pammel.

Vice Chairman John F. Ribble, III, called the meeting to order at 9:20 a.m. There were no Board Matters to bring before the Board; therefore, Vice Chairman Ribble called the first scheduled case.

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Page 97, October 14, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ALI TABATABAI, VC 97-H-079, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard on a lot containing less than 36,000 sq. ft. and a 6.0 foot high fence in a front yard. Located at 9001 Lupine Den Drive on approx. 25,614 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((34)) 32.

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. Ali Tabatabai, of 9001 Lupine Den Drive, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting to build a swimming pool and construct a 6-foot fence, each of which requires a variance.

Ali Tabatabai said that he had been assured by the builder that the part of his property where they intended to place the pool was, for all practical purposes, considered a back yard but, when seeking the permit, they were informed that the 15-foot access road running behind his property had, according to the Zoning Ordinance's definition, rendered that part of the yard as a front yard. Mr. Tabatabai explained that the fence was necessary for security and that he wanted the pool for his family's use.

Vice Chairman Ribble called for speakers either in support or opposed to the requested variance and receiving no response, he closed the public hearing.

Mr. Hammack moved to approve VC 97-H-079 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 7, 1997.

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

ALI TABATABAI, VC 97-H-079, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard on a lot containing less than 36,000 sq. ft. and a 6.0 foot high fence in a front yard. Located at 9001 Lupine Den Drive on approx. 25,614 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((34)) 32. 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 14, 1997; and

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

1. The applicant is the owner of the land.
2. This variance request is necessitated by an old, previously dedicated right-of-way which runs across, in reality, the property's rear but Ordinance definitions mandate that the yard be considered a front yard which must meet Ordinance requirements.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (a swimming pool) and a 6.0 foot high fence in a front yard, shown on the plat prepared by Eugene A. Kiernan, Jr. dated July 15, 1997, 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 unanimous vote of 4-0; Messieurs DiGiulian, McPherson, and Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 79, October 14, 1997, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD W. FIELDS & KAREN FIELDS, VCA 88-V-048, Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 88-V-048 to permit addition to accessory structure to be 3.4 ft. from side lot line and 7.6 foot high fence in a front yard. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38.

Vice Chairman Ribble noted that this case needed to be rescheduled due to the fact that the notices were not in order.

To clarify the problem with the notices, Heidi Powell, Staff Coordinator, explained that the application was advertised to permit a 7.6-foot high fence in the front yard and staff has determined that the fence would be sitting on top of a wall which makes the total height 8.7 feet, thus requiring readvertisement. It was staff's suggestion, Ms. Powell submitted, to reschedule the public hearing to December 9, 1997.

Acknowledging that there was no objection, Vice Chairman Ribble so ordered and the public hearing on VCA 88-V-048, Richard W. Fields & Karen Fields, was rescheduled to December 9, 1997, at 9:00 a.m. He informed the audience that, because the notices were not in order, the Board was restricted from taking action on this application but the Board would hear any speakers who wanted to speak to the issue of this application's rescheduling.

Max W. Noah, 820 Arcturus on the Potomac, Alexandria, Virginia, requested that the deferred date not fall on a holiday and was reassured by Vice Chairman Ribble that the rescheduled date is December 9th.

William W. Vodrum, 913 Arcturus on the Potomac, Alexandria, stated that he would not be able to attend the December 9th public hearing but would submit a written statement for the record.

There being no further action on the case, Vice Chairman Ribble called the next case.

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Page 79, October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. ST. LUKE'S UNITED METHODIST CHURCH, SPA 84-D-001, Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 84-D-001 for church and related facilities to permit a child care center. Located at 7628 Leesburg Pike on approx. 3.97 acres of land zoned R-4, HC. Dranesville District. Tax Map 39-2 ((1)) 57A. (OUT OF TURN HEARING GRANTED)

Vice Chairman Ribble called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ed Childress, identifying himself as the Pastor of St. Luke's United Methodist Church, replied that it was.

Heidi Powell, Staff Coordinator, presented the staff report. She explained that the applicant was requesting approval to amend SP 84-D-001 for a Group 3 Use to permit the existing child care center to increase its maximum daily enrollment, change its closing time, and increase its number of staff. Ms. Powell stated that all issues have been addressed by the Proposed Development Conditions and through their implementation, the proposed use would be in harmony with the Comprehensive Plan, would be in conformance with the applicable Zoning Ordinance provisions, and staff recommended approval of this special permit amendment.

Ed Childress stated that St. Luke's Methodist Church was committed to serve the community and that this proposal was another avenue towards that continuous goal. He called the Board's attention to two minor concerns they had with Development Conditions #10 and #12. Concerning Development Condition #10, Mr.

Childress requested that the church's closing time be extended to 7:00 p.m. With regards to Development Condition #12, he explained that the shared parking requirement had been satisfactorily resolved with the Department of Environmental Management (DEM).

Ms. Powell stated that staff had no problem with extending the day care's daily operations from 6:00 p.m. to 7:00 p.m. and, if the church had obtained approval of the shared parking agreement, then Condition #12 was mute. She responded to Mr. Hammack's question concerning Development Condition #4, increasing the number of children, explaining that no site plan was required, but only that they be in compliance with Article 17. She added that the Director of DEM would determine whether or not a site plan was required.

Connie Richberg, Director of the Center, further explained that the results of their recent meeting with staff from the zoning division had determined that their engineering firm, Dewberry and Davis, would resubmit their plat, which had been done.

Vice Chairman Ribble called for speakers but received no response, therefore, he closed the public hearing.

Mr. Kelley moved to approve SPA 84-D-001 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated October 7, 1997.

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

ST. LUKE'S UNITED METHODIST CHURCH, SPA 84-D-001, Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 84-D-001 for church and related facilities to permit a child care center. Located at 7628 Leesburg Pike on approx. 3.97 acres of land zoned R-4, HC. Dranesville District. Tax Map 39-2 ((1)) 57A. (OUT OF TURN HEARING GRANTED). 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 14, 1997; and

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

1. The owner of the subject property is the applicant.

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; (HC) Sect. 7-600 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7628 Leesburg Pike (3.97 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis dated June 23, 1997, revised through September 16, 1997, 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. Transitional screening may be modified provided:

Supplemental evergreen plantings shall be provided and maintained between the parking lot and the eastern lot line abutting Section 2 of the Leonard subdivision, generally in the area shown on the plat. The type and extent of such plantings shall screen the view of the parking lot from the adjacent residences. The amount and type of such plantings shall be determined by the Director, Department of Environmental Management; and;

The existing vegetation to the northern rear of the property shall be retained and maintained.

6. The barrier requirement shall be waived.
7. The seating capacity in the main worship area shall be a maximum of 210.
8. The maximum number of students shall be 99.
9. The age of the students shall not be less than two and one-half (2-1/2) years or more than ten (10) years.
10. The normal hours of operation for the child care center shall be limited to Monday-Friday, 7:00 a.m. to 7:00 p.m.
11. The maximum number of child care center staff shall be 15.
12. There shall be 61 parking spaces, three of which shall be accessible. All parking shall be on site.
13. Through access from Burnside Court to Leesburg Pike shall be restricted as follows:

The gate shall be located as shown on the plat and shall be kept closed at all times except during major church functions where it could reasonably be expected that the entire parking area would be used. Under no circumstances shall the gate be opened in conjunction with the child care center use.

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

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 and a new Non-Residential Use Permit has been obtained. 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.

Page 82, October 14, 1997 (Tape 1), ST. LUKE'S UNITED METHODIST CHURCH, SPA 84-D-001, continued from Page 81)

Mr. Dively seconded the motion which carried by a unanimous vote of 4-0; Messieurs DiGiulian, McPherson, and Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 82, October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. BEATTY DEVELOPMENT CORPORATION, VC 97-M-068, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 27.7 ft. from front lot line and parking to remain less than 10 ft. from front lot line. Located at 7414-7448 Little River Turnpike on approx. 8.98 ac. of land zoned C-6, C-8, HC, SC. Mason District. Tax Map 71-1 ((20)) 6.

Vice Chairman Ribble called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Thomas, the engineer with the firm of Bengston, DeBell & Elkin, Ltd., 5900 Centreville Road, Centreville, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, presented the staff report. She explained that the applicant was requesting a 12-foot variance for its building to remain 27 feet from the front lot line and a 3.5-foot variance to permit its parking spaces to remain a minimum of 6.5 feet from the front lot line.

Dennis Thomas explained that when the applicant sought to expand the Safeway Store, the resulting site plan preparation had revealed that there were two existing conditions which are in violation of the Zoning Ordinance. He emphasized that both conditions are preexisting; that each requires a variance; that the building has been in its current location, 27.7 feet from the front lot line, since 1968 and; in order to make the parking conform with the Ordinance, they would lose parking spaces required to meet the Ordinance.

Vice Chairman Ribble called for speakers either in support or in opposition to the variances and, receiving no response, he closed the public hearing.

Mr. Dively moved to approve VC 97-M-068 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated October 7, 1997.

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

BEATTY DEVELOPMENT CORPORATION, VC 97-M-068, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 27.7 ft. from front lot line and parking to remain less than 10 ft. from front lot line. Located at 7414-7448 Little River Turnpike on approx. 8.98 ac. of land zoned C-6, C-8, HC, SC. Mason District. Tax Map 71-1 ((20)) 6. 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 14, 1997; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. This is a situation which has been ongoing for 30 years without causing any problems.
3. The request is minimal and they are not asking for much of a change.

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

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

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

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

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

1. This variance is approved for the location of a shopping center and parking spaces shown on the plat prepared by Dennis M. Thomas, dated July 14, 1997, 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. Hammack seconded the motion which carried by a unanimous vote of 4-0; Messieurs DiGiulian, Pammel, and McPherson were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 22, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 83, October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. TYSONS CORNER EXERCISE INC., SPA 81-D-075-2, Appl. under Sect(s). 4-403 of the Zoning Ordinance to amend SP 81-D-075 for commercial swimming pool, tennis courts and similar courts to permit reduction in land area, building addition, change of permittee, and

reduction to minimum yard requirements based on error in building location to permit addition to remain 35 ft. from front lot line. Located at 8250 Greensboro Dr. on approx. 3.72 ac. of land zoned C-4. Providence District. Tax Map 29-3((15))pt. of 11-A1, 11-B1. (MOVED FROM 9/16/97)

Vice Chairman Ribble stated that this application has a problem and called upon staff for an explanation.

Julie Schilling, Staff Coordinator, explained that the applicant was in the process of amending the affidavit and application to reflect a new leaseholder and co-applicant. She stated that until the paperwork can be completed, the applicant was requesting a deferral.

Vice Chairman Ribble asked if there was anyone present who wished to comment on the deferral of this application.

John C. McGranahan, Jr., Esquire, the attorney for the applicant, urged a one-week deferral of the case emphasizing that the application did not warrant readvertising but that the action in process was to provide the correct applicant and permittee.

Mr. Dively moved to **DEFER** the public hearing on SPA 81-D-075-2 for one week to October 21, 1997, at 8:00 p.m. Mr. Hammack seconded the motion which carried unanimously by a vote of 4-0; Messieurs DiGiulian, Pammel, and McPherson were absent from the meeting.

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Page 84, October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. CARMEN E. GUERRERO, SP 97-M-011, Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 3328 Glenmore Drive on approx. 14,921 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((8)) 5.

Vice Chairman Ribble noted that this case had a deferral request.

Julie Schilling, Staff Coordinator, explained that this applicant's notices were in order, however, Ms. Guerrero, the applicant, had requested a deferral to allow time to conduct citizen meetings, through the Supervisor's office, in order to address citizen concerns as there was citizen opposition to this special permit request. Ms. Schilling noted that, because the notices were in order, it was the prerogative of the Board to either hear the case today or defer it accordingly. She further advised the Board that, if they granted this deferral, it would be the second deferral and that there was a Notice of Violation in effect. In response to Vice Chairman Ribble's question, Ms. Schilling explained that the operation of a child care center without a permit was a violation of the Zoning Ordinance.

Mr. Kelley moved to **DEFER** the public hearing on SP 97-M-011, to December 23, 1997 which was seconded Mr. Hammack. Mr. Kelley stated that he would vigorously oppose any further deferrals for this applicant.

Vice Chairman Ribble called for speakers who wished to speak to the deferral request.

John Restall, 3324 Glenmore Drive, Falls Church, Virginia, voiced his dismay over the fact that the applicant was granted another deferral as he and his neighbors were anxious to speak to the issue of a commercial use operating in a residentially zoned community. Acknowledging the fact that a second Addendum to the staff report which was dated October 14, was just submitted, he concurred with Vice Chairman Ribble that the deferral appeared necessary in order to have time to review this latest information.

Ms. Carmen E. Guerrero, the applicant, affirmed that the deferral was necessary because she wanted to address citizen concerns through a meeting and because her agent, who was to explain the application, was unable to be present today.

As there were no further speakers to comment on the deferral, Vice Chairman Ribble again called for a motion to defer.

Mr. Kelley moved to defer the special permit application SP 97-M-011 to December 23rd. which was seconded by Mr. Hammack.

Discussion followed between Mr. Hammack and Jane Kelsey, Chief, Special Permit and Variance Branch, concerning an earlier deferral date; November 11th was suggested.

Carmen Guerrero responded to the Board's questions regarding the citizen meeting she intended to schedule through her Supervisor's office.

Julie Schilling, Staff Coordinator with the Special Permit and Variance Branch, clarified that the Notice of Violation issued to the applicant was dated July 15, 1996.

Concurring that a November date would be more appropriate for all interested and concerned parties, Mr. Hammack made a substitute motion to defer the public hearing on SP 97-M-011 to November 11, 1997 at 9:00 a.m. Mr. Dively seconded the motion which carried unanimously by a 4-0 vote; Messieurs DiGiulian, Pammel, and McPherson were absent from the meeting.

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Page 85 , October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. SAM A. LEE, SP 97-L-035, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6352 Rockshire Street on approx. 2,712 sq. ft of land zoned R-8. Lee District. Tax Map 91-3 ((10)) 28.

Vice Chairman Ribble announced that this applicant's notices were not in order.

Jennifer Smolko, Planning Intern, concurred that the notices were not in order and that staff was requesting a deferral date of December 2, 1997. In response to Mr. Dively's question, Ms. Smolko explained that the applicant simply did not do the notices.

Sam A. Lee, 6352 Rockshire Street, Alexandria, Virginia, explained that he did not understand the notification process nor its time constraints which was why he had neglected to perform the requirement.

Vice Chairman Ribble called for speakers in the audience who may want to speak to the issue of this case's deferral and receiving no response, requested that the Board offer a motion for deferral.

Mr. Hammack then moved to **DEFER** the public hearing on SP 97-L-035 to December 2, 1997 at 9:00 a.m.

Mr. Dively seconded the motion which carried by a unanimous vote of 4-0; Messieurs DiGiulian, Pammel, and McPherson were absent from the meeting.

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Page 85 , October 14, 1997 (Tape 1), Scheduled case of:

9:00 A.M. WOODY'S GOLF RANGE, INC., A VIRGINIA CORPORATION, WOODROOF G. FITZHUGH, PRESIDENT, SPA 79-D-176-2, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for a golf driving range and baseball hitting cages to permit miniature golf course ancillary to the golf driving range, site modifications, building expansion and change in development conditions. Located at 11801 Leesburg Pike on approx. 29.01 ac of land zoned R-1, HD. Dranesville District. Tax Map 6-3 ((1)) 33, 33A. (MOVED FROM 2/6/96, 8/6/96, 11/7/96, and 3/4/97, and 9/16/97.)

Vice Chairman Ribble asked the applicant's representative if his case was ready to go forward.

Grayson P. Hanes, Esquire, with the firm of Hazel & Thomas, P.C., located in Falls Church, Virginia, representing the applicant, reaffirmed the affidavit.

Susan Langdon, Staff Coordinator, presented the staff report. After giving a brief description of the site, she informed the Board that the applicant had submitted a special permit amendment which included three plats: one depicting the existing conditions on the site; the second depicting an Option A Request; and the third plat depicting an alternate Option B request. She explained the proposals of Options A and B, pointing out that the applicant had requested the approval of Option A and that the major difference between the two special permit plats was that Option A described a relocation and expansion of the miniature golf course. In staff's determination, Ms. Langdon stated, Option A did not meet the required general special permit standards nor standards for Group 6 Uses. In summary, she said, staff's conclusion was that the proposal outlined in Option A was not in harmony with the Comprehensive Plan; however, staff did recommend approval of Option B, subject to the development conditions. She called the Board's attention to staff's submission, distributed that morning, comparing Woody's Golf Range with other approved special permit uses that have golf driving ranges. Ms. Langdon noted that the applicant had recently submitted a revised Condition #11, concerning proposed lighting, to replace staff's Development Condition #11 and that staff required more information. Ms. Langdon also pointed out that the applicant had submitted additional proposed changes to the development conditions which, she presumed, the applicant would distribute during his justification testimony and of which staff had not had time to review.

Ms. Langdon responded to Mr. Kelley's questions stating that the primary differences between Option A and B, was the location of the miniature golf course.

Grayson Hanes presented, for the record, a petition evidencing citizen support for the application along with the applicant's proposed development conditions noting that the applicant's varied from those of staff's. He submitted that the changes were minor but important and advised the Board that, at this point in time, the applicant would no longer pursue Option A, the relocation and expansion of the existing miniature golf course, but, instead, were requesting the Board's approval of Option B. Mr. Hanes noted the facility's numerous amenities and that it offered family recreational activities. He pointed out a plat correction reporting that what appeared as a shed was, in fact, a gazebo from which a limited selection of refreshments and golf tees were sold. He clarified that the lights would not exceed 30 feet in height. Mr. Hanes itemized the staff's development conditions #6, #7, #9, #11, #12, and #16, explaining the changes to each that the applicant requested. He explained the reasons for changing the hours of operation and the closing time. He cited the necessity and use of the gravel parking area with the adjacent road, and requested that the language in Development Condition #7 delete the words for their removal. Mr. Hanes noted the substantial amenities proposed by the applicant and the importance of these added attractions for the enjoyment, entertainment and education of all ages. He submitted that the facility's activities should not be limited to certain groups or occasions.

In response to Mr. Hammack's query, Mr. Hanes explained the necessity for extending the facility's hours of operation, submitting that the collection of golf balls and maintenance of the grounds was time consuming.

In response to Mr. Hammack's question, Sara Howard-O'Brien, a planner with the firm of Hazel & Thomas, further explained the additional equipment required for the amenities requested for the expanded facility.

Ms. Langdon addressed the issue of the golf park's activities and ancillary uses as compared to that of an amusement park in response to a question posed by Mr. Hammack. She advised the Board that staff was unaware of the virtual reality section as well as the area slated for the preparation of grilled food items and that staff has not had an opportunity to review these proposals.

Mr. Hanes explained the use for and necessity of the requested grill.

Vice Chairman Ribble called for speakers in support of the application.

Page 87, October 14, 1997 (Tape 1), WOODY'S GOLF RANGE, INC., A VIRGINIA CORPORATION, WOODROOF G. FITZHUGH, PRESIDENT, SPA 79-D-176-2, continued from Page 86

Dan Levine, the owner and president of Legacy Development Corporation, explained that he is developing 10-acre parcel adjacent to the golf park. He emphasized that, in his opinion, the proposed facility is of superior design and operation; is an asset for the sale of his residential development and will be a tremendous recreational use for any community.

Jackie Johnson, a Herndon resident, stated that the area needs an organized place to hold family-oriented, recreational activities. She affirmed that Woody's Golf Course provides a much needed and greatly appreciated amenity to the area and urged its continued support. Ms. Johnson noted that she has assisted in numerous group outings and activities for children and that Woody's Golf Course offered a delightful, playful excursion for the children and adults alike.

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

Commenting that staff needed time to review the applicant's changes, Mr. Hammack moved to **DEFER** the decision on SPA 79-D-176-2 to October 21, 1997, at 8:00 p.m.

Mr. Dively commented on the importance, and necessity, of at least four BZA members to be present the following week in order to move on this case's decision. The common consensus of the Board was that the four members present, Messieurs Dively, Hammack, Kelley, and Ribble intended to be at the October 21st meeting. Following their brief discussion, Mr. Dively then seconded the motion to defer the decision on SPA 79-D-176-2 which carried unanimously by a vote of 4-0; Messieurs DiGiulian, Pammel, and McPherson were absent from the meeting.

At that time, Mr. Kelley noted the importance of every BZA member's vote on the decision for Woody's Golf Range, Inc. He submitted that, before the October 21st meeting, the three members absent should be apprised of Woody's public hearing proceedings so that they may vote on the decision. Mr. Kelley requested that staff provide an audio or video tape to each absent member.

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Page 87, October 14, 1997 (Tape 1), Scheduled case of:

9:30 A.M. ROY AND JUDY L. LATHROP, A 1997-MV-024, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants are parking more than one commercial vehicle on the property associated with their Home Occupation Permit, and are allowing more than one non-resident employee on the premises, all in violation of Zoning Ordinance provisions. Located at 9015 Captains Row, on approx. 15,080 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1((3))(2)3.

Pointing out that the appellants are requesting a deferral, William Shoup, Deputy Zoning Administrator, called the Board's attention to staff's position as set forth in his memorandum dated October 6, 1997. He stated that staff believes the appellants are in violation of the Zoning Ordinance and that the activities on-going on the subject property will also to be cited for additional violations in the near future. Mr. Shoup stated that it is assumed the appellants will appeal the forthcoming Notice of Violation; therefore, staff was recommending deferral of the public hearing until January 13, 1998.

Vice Chairman Ribble called for speakers who wished to address the issue of this appeal's deferral.

The appellants, Roy and Judy Lathrop, 9015 Captains Row, Alexandria, stood together at the podium to address the Board. Roy Lathrop explained their two reasons for requesting the deferral: they believed that they are in compliance with the Zoning Ordinance and, in anticipation of the forthcoming Notice of Violation, they wanted staff to have sufficient time to make its determination as well as time for themselves to seek counsel. In response to Vice Chairman Ribble's question concerning the January deferral date, Judy Lathrop submitted that they are completely ignorant of the substance and issues regarding this forthcoming violation notice and that, she believed, an additional 30 days, to a February 1998 date, was warranted.

Mr. Shoup voiced his opposition to extending the deferral date explaining that there already was considerable citizen concern about the on-going violation and that, he believed, the January date would allow the appellants sufficient time to file an appeal over the forthcoming violation notice.

In response to Mr. Lathrop's request, several Board members advised him that the law requires the remittance of a \$210.00 fee whenever an appeal is filed and that different Notices of Violation, albeit that each notice cites similar issues, they cannot be lumped together with a single \$210.00 appeal fee.

Vice Chairman Ribble called for anyone in the audience who wished to speak on the issue of this appeal's deferral.

Henry E. Raduazo, 9012 Captains Row, Alexandria, Virginia, voiced his support of the deferral.

Leonard Paul, 8906 Captains Row, Alexandria, Virginia, stated that there are a lot of people, many senior citizens, who are opposed to the deferral of this case. He explained that a January date would make it difficult for many of these people to attend and therefore, he was opposed to the deferral.

Brian Anderson, 9022 Graylocks Street, Alexandria, Virginia, said that a deferral was appropriate, if needed, and a January deferral date should be sufficient time for the appellants to get organized. He added that he was one of the many folks who is concerned about this issue.

Discussion followed among Messieurs Hammack and Kelley and Mr. Shoup concerning the plausibility of consolidating the appeals.

Commenting that there should be adequate time for the Lathrops to seek legal counsel and that staff should review the possibility of consolidating additional violations, Mr. Hammack moved to DEFER the public hearing on A 1997-MV-024, Roy and Judy L. Lathrop, to January 13, 1998.

Mr. Dively seconded the motion which carried unanimously; Messieurs DiGiulian, McPherson, and Pammel were absent from the meeting.

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The Board recessed at 10:47 a.m. and reconvened at 10:55 a.m.

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9:30 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, Appeal 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES. CONTINUED FROM 3/11/97 TO ALLOW APPLICANT TO FILE A SPECIAL PERMIT OR VARIANCE. DEF. FROM 9/16/97)

After reviewing the October 10, 1997, memorandum from William Shoup, Deputy Zoning Administrator, which explained that the appellant's Special Permit application for error in building location was incomplete and that a further deferral was requested, Mr. Dively moved to DEFER the public hearing for appeal, A 96-B-43, Black Oak Properties, Inc., to February 24, 1998 at 9:30 in the morning.

Mr. Hammack seconded the motion which carried unanimously; Messieurs DiGiulian, McPherson, and Pammel were absent from the meeting.

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Consideration of Appeal Acceptance for Garland L. Neese, Sr., & Ruby L. Neese

In response to Mr. Hammack's question and referencing his October 7, 1997 memorandum, William Shoup, Deputy Zoning Administrator, explained staff's reasoning for recommending that the appeal be accepted for only one, of the two, Notices of Violation issued to the Neeses.

Discussion followed between Board members Hammack and Ribble concerning the appellants time constraints for filing.

Mr. Shoup further explained the two cited violations and to what each pertained and on which subject property.

Mr. Hammack **REQUESTED THAT STAFF** investigate what actions were taken by the Neeses to resolve either of the violations; for staff to advise the appellants of possible recourse and/or action they may take; and to report its findings to the Board at the next BZA meeting, October 21st. This proposal, concurred with by the other Board members, was seconded by Mr. Kelley and carried by a unanimous vote of 4-0; Messieurs DiGiulian, McPherson, and Pammel absent from the meeting.

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Page 89, October 14, 1997 (Tape 2), Action Item:

Out-of-Turn Hearing Request
Zack H. Shelley, Jr., SP 97-V-049

A brief discussion ensued among the Board members concerning the justification for Mr. Shelley's request. Mr. Dively then moved to **ACCEPT** the Out-of-Turn Hearing for SP 97-V-049, Jack H. Shelley, Jr., for the morning of December 9, 1997. Mr. Kelley seconded the motion which carried unanimously; Messieurs DiGiulian, McPherson, and Pammel were absent from the meeting.

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Page 89, October 14, 1997 (Tape 2), Action Item:

Approval of Resolutions for October 7, 1997

There being no objection, Mr. Dively moved to **APPROVE** the October 7, 1997 Resolutions which was seconded by Mr. Hammack and carried unanimously; Messieurs DiGiulian, McPherson, and Pammel 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 11:10 a.m.

Minutes by: Paula McFarland

Approved on: January 20, 1998



Susan C. Langdon, Chief
Special Permit/Variance Branch, BZA



John F. Ribble, III, Vice 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 21, 1997. The following Board Members were present: Vice Chairman John Ribble, Robert Dively, Paul Hammack, Robert Kelley, and Timothy McPherson. John DiGiulian and James Pammel were absent.

Vice Chairman Ribble called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and he called for the first scheduled case.

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Page 94, October 21, 1997 (Tape 1), Scheduled case of:

8:00 P.M. MICHELE F. DANDREA, SP 97-P-025, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements Based on error in building location to permit addition to remain 0.8 ft. from rear lot line. Located at 2200 Stefan Dr. on approx. 3,120 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4((38))59. (DEF. FROM 7/29/97 FOR READVERTISING. DEF. FROM 9/16/97 AT APP.'S REQUEST)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michele Dandrea, 2200 Stefan Drive, Dunn Loring, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a special permit to allow modification to the minimum yard requirements based on error in building location, and to permit the addition of a deck with a privacy screen and stairs to remain 0.8 feet from rear lot line. Ms. Schilling stated that a rear setback of 20 feet is required in the R-5 District; therefore, the amount of the variance is 19.2 feet. She also stated that a Notice of Violation was issued to the applicant on January 29, 1997, for construction of a deck less than 20 feet from rear lot line without a building permit.

There were no questions for staff and Vice Chairman Ribble called Ms. Dandrea to the podium.

The applicant submitted photographs and a letter from a neighbor. She said she bought the town home from Horning Brothers, and hired a contractor to build a deck in the back. She said the contractor designed a deck with a privacy screen and stairs, which was designed to fit other designs within the community. The drawings were approved by the builder, who was acting as the homeowners' association. The applicant said she trusted the builder, but found out that the builder had not obtained a building permit and that the deck was built in noncompliance. She said she did not know that the deck was considered an addition because of the enclosure and stairs since others in the community are similar and does not impose any obstruction, traffic, hazard, or visual impairment. The applicant said that the granting of the variance would prevent her from the extreme hardship of removing the deck.

Mr. Hammack asked staff if the enclosed deck could have been built if it was part of the original building permit and would it be a matter of right. Staff responded by saying there was nothing within zoning that would permit a privacy screen or an addition closer than the 20 feet required to the rear lot line.

Mr. Hammack asked if other screens within the community have the same problem. Staff responded by referring to another case that would be heard on November 4, 1997, regarding a property owner with a similar situation. Staff also said other homeowners in the community have screened decks, which are in violation.

Mr. Hammack asked staff if the original permit showed a deck without the privacy screen, would it be a violation if it was constructed. Staff responded by saying because the stairs are part of the deck, they encroach too far into the rear yard setback and would still be in violation.

Mr. Hammack asked if the other decks constructed by the builder were in violation and staff said yes.

Vice Chairman Ribble asked for speakers in support of the application to step to the podium.

Lisa Perisee, 2202 Stefan Drive, Dunn Loring, Virginia, said she is the property owner adjacent to the applicant and is most affected by the structures. She said in a town home setting there is not much privacy and that the deck, stairs, and privacy screening would increase the value of the applicant's property and her own property.

Ms. Perisee said the uniqueness of the properties make the addition more tolerable since there is no other adjoining property owner in the rear of their lot. She said the deck would be seen only by her and the immediate neighbors, who also support the application.

Vice Chairman Ribble called for speakers opposing the application to step to the podium.

Charles J. Boyle, 2224 Journet Drive, Dunn Loring, Virginia, vice president of the homeowners' association, said the association opposed the application. He said the town home community consists of 60 homes, with six homes in violation for structures built without permits.

Mr. Boyle read part of the association's by-law. He said the applicant, along with all the other homeowners, was given a copy of the Association's Bylaws, which explains permitted and non-permitted improvements and uses. He said neither the applicant nor Horning Brothers can provide approval for the construction of the deck.

Mr. Hammack asked Mr. Boyle if the other decks were approved before the creation of the homeowners' association and he said the approval documents were produced for the construction of the other decks, but none is available for the applicant.

In her rebuttal, the applicant said she has written approval for the patio, which was part of the original package, but was unable to get documentation of approval for the deck. She said her Realtor can provide proof that she acted in good faith and that verbal approval of the deck was given in August of 1994, also that the deck is compatible with others in the community.

Mr. Hammack asked the applicant if she or the builder had obtained a building permit for the deck and if the builder is licensed. The applicant said David Rutland was the builder and he had not obtained a building permit. She said she does not know if he is licensed, since he was highly recommended by her Realtor.

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

Mr. McPherson made a motion to grant SP 97-P-025 for reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 22, 1997.

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

MICHELE F. DANDREA, SP 97-P-025, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.8 ft. from rear lot line. Located at 2200 Stefan Dr. on approx. 3,120 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4((38))59. Mr. McPherson moved that the Board of Zoning Appeals adopt the following resolutions:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 1997; and

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

1. The applicant is the owner of the land.
2. The Board is not easily swayed when applicants request approval to construct structures that are close to the property line because it makes maintenance difficult.
3. The applicant acted in good faith in constructing the deck and is not necessarily at fault since she followed the advice of her agent.
4. The steps and privacy screen look good.
5. The neighbors have no objections.
6. The property is an end lot and there is no real impact on the community.
7. There are no unsafe conditions with respect to the property or the public streets.
8. If the applicant is required to comply with the minimum yard requirements, it would cause unreasonable hardship.

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 a deck and stairs shown on the plat prepared by Richard J. Cronin IV, Dewberry and Davis, dated March 5, 1997 submitted with this application and is not transferable to other land.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 94, October 21, 1997, (Tape 1), Scheduled case of:

8:00 P.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97.)

Vice Chairman Ribble said the case was open for decision only and asked William Shoup, Deputy Zoning Administrator, to address the issues concerning the application.

Mr. Shoup said that a copy of a memorandum from Thomas Merrit of the Mapping Administration Department, dated October 17, 1997, was distributed to the Board. He said the memo contained color copies of the 1978, 1980, 1982, and 1996 aerial photos, which he intended to use for illustrating points to be made in his rebuttal of the appellant's position and some of the testimony brought out at the July 22 hearing.

Mr. Shoup presented 24 affidavits from citizens in the Chesterfield Mews subdivision and 4 affidavits from citizens in the Mantua Development who attested to the expansion of the plant nursery operation. He noted that he was in receipt of Mr. Hanes' October 21, 1997 response to his October 14, 1997, memorandum, and indicated that while he reviewed it briefly, he was not prepared to respond to it in detail.

Mr. Shoup said in his response that the Board must go back to square one and take a look at why they were there. He said this was an appeal of the October 11, 1996, Notice of Violation which addressed issues that the appellants have enlarged the plant nursery operation and added buildings without special exception approval in violation of Par. 2, Sect. 15-101. He said this is not about nonconforming uses. He indicated that Par. 2, Sect. 15-101, addresses a use that at one time was a permitted use by right, but now under this Ordinance is a special exception use. He also stated that Par. 2, Sect. 15-101 states that continued operation of a preexisting use is permitted to an extent that is lawful, but is not a nonconforming use; however, if the appellants expand, they must get special exception approval.

Mr. Shoup said the Board of Supervisors did not eliminate the concept of nonconforming uses when they adopted this language but that certain uses were grandfathered under Par. 2 Sect. 15-101. He said that the issue before the Board is the grandfathered use which the appellant is using. He indicated that the issue is whether or not the nursery has been enlarged or additional buildings added since August 14, 1978, which is the effective date of the current Zoning Ordinance.

Mr. Shoup said that the appellants suggested March 1, 1982, the date of an amendment to the Zoning Ordinance, to be the date from which grandfathering should be established. The requirement for special exception approval for plant nursery uses in the R-1 District was first established with the adoption of the August 14, 1978 Ordinance.

Mr. Shoup said there have been two amendments since the August 14, 1978 effective date, and the current language which is now in the Ordinance is the result of the last amendment that was adopted on March 1, 1982. He said neither amendment allowed for the sale of non-nursery stock as a use by right, nor did the amendments eliminate the requirement that a special exception approval was needed for a plant nursery in

R-1 District. Since this issue deals with an enlargement without a special exception, it is proper to use August 14, 1978, to assess the changes that have occurred.

Mr. Shoup said he believes there is uncontroverted evidence that buildings have been added to the site since that date.

He said there was a question as to what is identified as Building Number 7 on the sketches that were provided in the original staff report. He further stated that Building Number 7 is a pole shade structure that was not seen on the 1978 aerial photo but first appeared in the 1980 aerial photo. He presented a sketch that was taken from the original staff report that showed that Buildings Number 8-10 and 13 were added to the site since August 14, 1978. Building Number 7 was added after August 14, 1978, which has a possible grandfathered right to remain. Removal of Buildings 11 and 12 have been confirmed. With respect to Building Number 10, the appellant admitted at the July 22, 1997, hearing that the structure was built in the 1980s. Mr. Shoup referred to aerial photos to show areas of the site expansion from 1978 through 1996. He used the aerial photos to show that additional area on the site has been used for plant nursery operation that has occurred after the effective date of the Zoning Ordinance. Mr. Shoup further stated that additional items being sold has also expanded beyond the BZA's decision in the 1974 appeal. He said the appellants' acknowledged that they were limited to the sale of plants in the mid-1970s, and their desire to sell more items was brought before the Zoning Administrator who told them they could not sell the items, then the case went before the BZA and the Zoning Administrator's decision was upheld. Mr. Shoup stated that since the appeal or the effective date of the Ordinance, nothing has changed to indicate that non-nursery stock items could be sold. He said that there are some definitions in the amendment that explained what can be sold on the property. Mr. Shoup then read the definition of plant nursery in accordance with the provisions of Sect. 9-517. He said that in order to allow these items to be sold would constitute taking an action that is reserved for the Board of Supervisors.

Mr. Shoup said that for the reasons he presented to the Board and the reasons which are contained in the original staff report and in his October 14, 1997 memorandum, he believes that the appellants have enlarged the business and added buildings without obtaining a special exception approval as required by Par. 2, Sect. 15-101. Responding to the modification proposal presented by Mr. Hanes as part of his October 21 response submission, he said the BZA has authority to modify the Zoning Administrator's decision, but that he believes the modification has to be based on Ordinance provisions. He said he has no problem with Item #1 of Exhibit E which addressed uses allowed such as plants, trees, shrubs, and vines and that the appellants should be allowed to sell at retail the items listed in Item #1. He noted that Item #2 of Exhibit E was not an all inclusive list. He said he had questions about Items L through O and S of Item #2 such as Christmas trees, wreaths, pumpkins and gourds, Indian corn, local produce and, firewood. Mr. Shoup said he does not see how these items have any relationship to preserving the live and health of nursery stock.

With regard to the list of specific items not to be sold on Exhibit E, Mr. Shoup said that although Mr. Hanes mentioned statues and bird baths, he wanted to point out that ornamental lawn items, rocks, and bricks were discussed in the Notice of Violation as items not permitted to be sold and these are not covered on that list. He noted that the modification proposal does not address the additional structures or the issue of expanded area.

Mr. Hammack asked Mr. Shoup that if the appellants apply to the Board of Supervisors for a Category 5 special exception, if they cease usage of the plant nursery on the premises by vacating and removing all materials, or if they scale back the size of operation to what existed in 1978, would that bring the property into compliance and cure the Notice of Violation dated October 11, 1996 and could the Zoning Administrator agree with the areas of noncompliance. Mr. Shoup responded by saying yes. He said in the original staff report that was addressed and that scaling back to what was permitted on August 14, 1978 would be an option.

Mr. Hammack said this option should be made clear because misinformation is being transmitted throughout the public implying that the Board is being asked to close Craven's Nursery. He asked Mr. Shoup to clarify

the issues concerning testimony at the last hearing that stated the appellants could not apply to the Board of Supervisors for a special exception because the site was less than 5 acres.

Mr. Shoup said there are a number of additional standards that apply to special exception uses for plant nurseries. He said it is true that 5 acres is one of the standards. However, the Board of Supervisors has the authority to modify additional standards so that does not stand in the way of pursuing a special exception.

Mr. Dively asked Mr. Shoup to respond to Mr. Hanes' argument concerning the issue of nonconforming use.

Mr. Shoup said he was not prepared to respond in detail but that staff believes that the distinction is that the appellants' use is a grandfathered use and not a nonconforming use.

In response to Mr. Dively's question, Mr. Randall Greehan, County Attorney's office, provided an explanation distinguishing between nonconforming and grandfathered uses.

Mr. Hanes, in his response to Mr. Shoup's memorandum, said if the case is not handled correctly, the appellants would have to close down the nursery. He said there has been no expansion as far as the physical use of the property, and asked that the Zoning Administrator's decision be modified.

Mr. Kelley said if the decision was made in the appellants' favor, the Zoning Administrator's office probably would appeal. Mr. Hanes said if the Zoning Administrator's decision was upheld then the appellants would be out of business; but if they appeal, the appellants would not be immediately out of business.

Mr. McPherson asked Mr. Hanes what would constitute a change in the character of the use of the property and he said it would be difficult to weigh, since the character of the use has not changed.

Mr. Dively asked Mr. Hanes what was his opinion of nonconforming use and if the uses of 1978 were modified, what would be the effect of the decision and Mr. Hanes said most of the uses available today would be allowed. He further explained that grandfathering originated from the Board of Supervisors or the Legislative body's desires for uses in addition to the rights of nonconforming uses.

The Board Members and Mr. Hanes continued to discuss the case after which the public hearing was closed.

Mr. Hammack made a motion to uphold the Zoning Administrator's decision because he agreed with the findings. Mr. Kelley seconded the motion for discussion purpose only. There was discussion amongst Board Members pertaining to the application of the 1978 Ordinance. Mr. Dively asked if the modification conditions could bring the application back to 1978 under the character of use standards and what is not acceptable.

Mr. Hammack responded by saying he believes that the aerial photos showed evidence that the nursery has been expanded over the years and that there are things being stored on the property that should not be there.

Mr. Kelley withdrew his support of the first motion and offered a substitute motion to modify the decisions of the Zoning Administrator as recommended by the appellant along with Exhibit E. He said he felt that if the modification is violated, the Board would know what is not allowed to be sold. Mr. McPherson seconded the substitute motion. There was a vote of 4-1 with Mr. Hammack voting against the motion.

Mr. Shoup asked for clarification pertaining to Item #2. He said that wording by Mr. Hanes said "including the following." he wanted to know if it is the intent of the BZA to limit to just those items or whether or not there was additional room for movement.

Mr. Kelley said that it appeared to be a comprehensive list to the type and nature of things sold. Vice Chairman Ribble said he thought Mr. Hanes agreed to use the words "limited to."

Mr. Shoup asked for clarification on the specific items not allowed to be sold. He said that Mr. Hanes represented that it could include ornamental lawn items, rocks and bricks. Mr. Shoup asked if Mr. Hanes

representation was the intent of the BZA and Vice Chairman Ribble said yes it is. Mr. Shoup then asked the BZA if it is their intent that the decision does not deal with the additional land area being used or any additional structures and Vice Chairman Ribble responded by saying yes.

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Page 97, October 21, 1997, (Tape 1), Scheduled case of:

8:00 P.M. TYSONS CORNER EXERCISE INC. AND CMC VIRGINIA CLUB PROPERTIES, L.C., SPA 81-D-075-2, Appl. under Sect(s). 4-403 of the Zoning Ordinance to amend SP 81-D-075 for commercial swimming pool, tennis courts and similar courts to permit reduction in land area, building addition, change of permittee, and reduction to minimum yard requirements based on error in building location to permit addition to remain 35 ft. from front lot line. Located at 8250 Greensboro Dr. on approx. 3.72 ac. of land zoned C-4. Providence District. Tax Map 29-3((15))pt. of 11-A1, 11-B1. (MOVED FROM 9/16/97. DEF. FROM 10/14/97 FOR ADDITIONAL INFORMATION)

Vice Chairman Ribble called the applicants to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McGranahan, the applicants' agent, 8250 Greensboro Drive, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the revised staff report. The applicants have requested amendments under the special permit to include a reduction in land area from 3.72 acres to 3.59 acres, a change of permittee from Tyson's Corner Exercise, Inc. to include CMC Virginia Club Properties L.L.C, construct a 10-story office building within the area of the special permit, permit modification to the minimum yard requirements based upon error in building location, and allow existing 10 foot high walls surrounding the outdoor pool to remain 35 feet from the front lot line.

There were no questions for staff and Vice Chairman Ribble called Mr. McGranahan to the podium.

Mr. McGranahan said the application was made to add the office building to the special permit plat. He said even though an office is a by-right use in the C-4 district, the only uses the applicants are permitted on site are shown on the special permit plat. He said the applicants cleaned up the property boundaries because of the recent subdivision and they wanted the limits of the special permit to apply to the current parcel boundaries. He said prior special permit plats show a 10-foot high wall 35 feet from the front yard line, which required the modification to the front yard requirements they are seeking. Mr. McGranahan said that a week ago he discovered an issue with the permittee and a current contract purchaser which caused the one week delay. He said there are two applicants listed on the application, the owner of the property and the contract purchaser, who is the current lessee.

There were no speakers in support or opposition and the public hearing was closed.

Mr. McGranahan informed the Board that Condition 1 referred to a singular applicant and should be referred to plural applicants, since there are two. He also requested the word "reserved" in Condition 7 be changed to "provided."

Mr. Dively made a motion to grant SPA 81-D-075-2 for reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report, with changes to Conditions 1 and 7, dated October 7, 1997.

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

Page 98, October 21, 1997, (Tape 1), TYSONS CORNER EXERCISE INC. AND CMC VIRGINIA CLUB PROPERTIES, L.C., SPA 81-D-075-2, continued from Page 97

Appl. under Sect(s). 4-403 of the Zoning Ordinance to amend SP 81-D-075 for commercial swimming pool, tennis courts and similar courts to permit reduction in land area, building addition, change of permittee, and reduction to minimum yard requirements based on error in building location to permit addition to remain 35 ft. from front lot line. Located at 8250 Greensboro Dr. on approx. 3.72 ac. of land zoned C-4. Providence District. Tax Map 29-3((15))pt. of 11-A1, 11-B1. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolutions:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 1997; 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-4.
3. The area of the lot is 3.59 acres.
4. The property is in harmony with the Comprehensive Plans, the zoning regulations, as well as, the other buildings.
5. The property does not interfere with the other buildings in the area and will not cause safety problems.

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

THAT the applicants have 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 applicants, TYSONS CORNER EXERCISE INC. AND CMC VIRGINIA CLUB PROPERTIES, L.C., only and is not transferable without further action of this Board, and is for the location indicated on the application, 8250 Greensboro Drive (3.59 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted within the office building without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by VIKI Inc. dated March 27, 1997, as revised through September 17, 1997, 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 employees on the premises of the commercial recreation facility at any one time shall not exceed 35.

6. Occupancy of the commercial recreation facility shall not exceed 350 persons.
7. All parking requirements of Article 11 shall be met. At the time of site plan approval for construction of the new office building, parking tabulations shall be provided to DEM which document that adequate parking for all structures including existing and proposed uses to be located on Parcels 11A1 and 11B1 will be provided, both during and after construction, subject to DEM approval. Modifications to building footprints and surface parking areas shall only be permitted if such are in substantial conformance with that depicted on the SP plat. A minimum of 592 parking spaces shall be provided within parking structures and on the lot within the special permit area. Of these spaces, a minimum of 133 spaces shall be provided for the use of the commercial recreation facility. In the event that the proposed office building is not constructed, a minimum of 136 parking spaces shall be provided within the area of the special permit, in accordance with Sheet 5 of the approved plat.
9. Prior to issuance of permits for signs, a coordinated signage plan for the entire building shall be submitted to DEM which demonstrates that signage conforms with the requirements of Article 12 and utilizes a design which is consistent in style and materials throughout the site.
10. Streetscaping along Greensboro Drive shall be provided in accordance with Sheet 8 of the approved plat, subject to the review and approval of DEM, incorporating a pedestrian connection from the front entrance of the proposed office building to the sidewalk at the front of Greensboro Drive as shown on the sketch in Attachment B. Prior to issuance of a Non-Residential Use Permit for the commercial recreation facility, streetscaping shall be provided along Greensboro Drive adjacent to the commercial recreation facility, as shown on Sheet 8 of the approved plat. If commencement of construction for the proposed office building has not occurred within 30 months from the final date of approval, the applicants shall provide the balance of the streetscaping shown on Sheet 8 of the approved plat combined with the optional parking layout shown on Sheet 5 of the approved plat, within 48 months of the final date of approval.
11. Construction of the office building shall be in general accordance with the architectural rendering contained in Attachment A, subject to the review and approval of DEM.
12. The special permit shall be deemed to be established with approval of a Non-Residential Use Permit for the commercial recreation use.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicants 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. McPherson seconded the motion which carried by a vote of 5-0. Mr. DiGiulian and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 1997. This date shall be deemed to be the final approval date of this special permit.

8:00 P.M. WOODY'S GOLF RANGE, INC., A VIRGINIA CORPORATION, WOODROOF G. FITZHUGH, PRESIDENT, SPA 79-D-176-2, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for a golf driving range and baseball hitting cages to permit miniature golf course ancillary to the golf driving range, site modifications, building expansion and change in development conditions. Located at 11801 Leesburg Pike on approx. 29.01 ac of land zoned R-1, HD. Dranesville District Tax Map 6-3 ((1)) 33, 33A. (MOVED FROM 2/6/96, 8/6/96, 11/7/96, 3/4/97, and 9/16/97. DEF. FROM 10/14/97 FOR DECISION ONLY)

Vice Chairman Ribble stated that the case presented before the Board was for decision only and asked staff to comment on the applicant's last minute conditions. Mr. McPherson stated that he was not present for the previous meeting but that he had reviewed all of the documentation and listened to the tapes and was prepared to participate. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the case was also deferred because the Board asked staff to comment on the applicant's last-minute conditions and that staff was prepared to do so.

Susan Langdon, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report addendum. She stated that a staff report addendum was distributed to the Board and that there were several attachments, one being the revised proposed development conditions dated October 21, 1997; Attachment II being the applicant's proposed changes to the development conditions dated October 7, 1997; and, Attachment III being the revised plat that the applicant submitted on Friday, October 16, 1997.

The applicant requested that the hours of operation in Condition #6 be changed from 9:30 a.m. to 9:30 p.m., and expand the hours from 8:00 a.m. to 10:00 p.m. Staff supported the applicant's position of extending hours to 8:00 a.m. but in the interest of getting the lights turned off and closing down the operation in consideration of residential lots to the south and west of the applicant's property, staff still supported the 9:30 p.m. closing time which is consistent with other driving ranges in residential districts that have been approved. They are usually approved for closing between 7:30 p.m. and 9:30 p.m.

Condition #7 addressed the gravel parking lot adjacent to the batting cages. Staff recommended that they be removed. There are 162 parking spaces to the north of the Pro Shop. Only 118 are required for all uses on site. Staff recommended that the gravel parking be removed.

Ms. Langdon stated that staff would not object to Condition #9 which addressed the sand volleyball court, if the applicant wanted to move it. Staff did not agree with the location within the EQC, 10 feet from the stream bank. Staff felt that it would continue to provide erosion and sand and would spill into the stream. She stated that staff would not object if the applicant decided to move it.

Staff did not object to Condition #11 which dealt with additional lighting. Staff had a problem with four of those lights that were determined to be less than 100 feet from the southern lot line. She stated that the lights could not remain in that location. The applicant wants to partially light the golf course and retrieve golf balls until 11:30 p.m. Staff believed that the use should be closed down at 9:30 and an additional half hour allowed after that, until 10:00, to close the operation.

Staff stated that the applicant should provide the additional screening described in Condition #12 along the northern and southern lot lines, and the previously approved screening around the batting cages. Staff felt that there should be no loud speakers on site as described in Condition #13. Since the site is small enough that the applicant could easily locate and address patrons without the use of a loud speaker.

Staff supported the use of a grill as described in Condition #14 and included it in the revised condition. Staff supported Condition #19 which dealt with the Health Department's approval of the expanded clubhouse and additional tees.

Mr. Hammack noted that the applicant withdrew Option A in the original proposal they submitted and the Board will only consider Option B. He made a motion to grant SPA 79-D-176-2 in accordance with the

revised proposed development conditions proposed by staff dated October 21, 1997. Mr. Hammack substituted the applicant's Condition #13 with the one proposed by staff.

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

WOODY'S GOLF RANGE, INC., A VIRGINIA CORPORATION, WOODRUFF G. FITZHUGH, PRESIDENT, SPA 79-D-176-2, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for a golf driving range and baseball hitting cages to permit miniature golf course ancillary to the golf driving range, site modifications, building expansion and change in development conditions. Located at 11801 Leesburg Pike on approx. 29.01 ac of land zoned R-1, HD. Dranesville District. Tax Map 6-3 ((1)) 33, 33A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolutions:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 21, 1997; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant withdrew Option A in the original proposal.

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, 11801 Leesburg Pike, 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 Kal Kamel, P.E., dated August 20, 1997, signed October 16, 1997, and approved with this application and identified as "Option B", 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 employees on the site at any one time shall be eighteen (18).

- 6. The hours of operation shall be limited to 8:00 a.m. to 9:30 p.m., daily.
- 7. There shall be 162 parking spaces as depicted on the special permit plat between the entrance driveway and the pro shop (depicted as proposed building, 60'w x 100'l x 34'h). There shall be no expansion or relocation of the parking lot.

The gravel parking lot and road adjacent to the batting cages shall be removed. All parking shall be on site.

- 8. The tees on the driving range shall be limited to 60 grass tees, 70 concrete tees, 20 of which may be covered with a second story tee area, and 25 concrete tees which are open but may be covered with a rolling canopy. The grass tee area shall remain grass and shall not be expanded in number beyond 60, or in length or width beyond that depicted on the approved special permit plat.
- 9. A tree preservation, planting and restoration plan shall be submitted to the Urban Forestry Branch, DEM for review and approval at the time of site plan review and shall be implemented as required by DEM. This plan shall depict the limits of clearing as delineated on the special permit plat. The planting plan shall include parking lot landscaping as required by Article 13 of the Zoning Ordinance. The restoration plan shall be developed to revegetate and restore the portion of the EQC to the west of the entrance driveway, between the driveway and picnic area. This restoration shall include a mixture of native plants. The plantings need not be to PFM standards, but shall include a mixture of shrubs, saplings and whips as may be determined appropriate by the Urban Forestry Branch. The sand volleyball court shall be removed from the EQC.

- 10. The miniature golf course shall remain in the present location as an 18-hole course; it shall not be expanded or increased in size.

- 11. Driving range lights shall be limited to five (5), building mounted lights and three (3) pole lights, thirty (30) feet in height. Batting cage lighting shall be limited to nine (9) lights, twenty (20) feet in height and the existing two (2) lights located on the existing booth at the batting cages. Miniature golf course lights shall be limited to five (5) lights, each a maximum of thirty (30) feet in height plus the accent lighting within the course itself. Existing lighting at the entry sign and at the bulletin board at the end of the sidewalk may be retained. The lighting at the picnic area, the twenty-four (24) foot and thirty (30) foot high lights between the driving range and batting cages, and the two (2) thirty (30) foot high lights at the southernmost end of the existing concrete tees shall be removed.

The combined height of the light standards and fixtures in the parking areas shall not exceed twelve feet.

All pole lights must be equipped with glare control hardware. The maximum number of allowable light fixtures on each driving range, miniature golf course and batting cage light poles shall be two (2), except for the one miniature golf course light located in the course itself which shall be allowed to retain the existing four (4) fixtures. The maximum number of allowable light fixtures on each parking lot light pole shall be one (1).

Ground level security lighting may be provided for the pro shop, the drive into the parking lot, at the entrance to the range and along the pedestrian sidewalks and pathways.

No other lighting beside that outlined above may be provided on site.

Additionally, all lighting shall be in accordance with the following:

- The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.

- Shields shall be installed, if necessary, to prevent light and/or glare from projecting beyond the facility.

All lights except the pro shop and parking lot lights shall be turned off by 9:30 p.m., daily. The pro shop and parking lot lights shall be turned off by 10:00 p.m., daily.

12. Existing vegetation and proposed landscaping as depicted on the special permit plat shall be used to meet transitional screening requirements along the northern, eastern and western lot lines.

In addition, two rows of evergreen trees shall be provided along the southern lot line to supplement existing vegetation. This vegetation shall be planted to the south of the existing concrete tees in the area where no existing vegetation is depicted on the special permit plat.

Two rows of evergreen trees shall be planted around the northern, southern and western perimeters of the batting cages as previously approved in conjunction with SPA 79-D-176.

The barrier requirement shall be waived.*

13. There shall be no use of loudspeakers on the property; except for emergency situations, such as medical emergencies, electrical storms, and similar occurrences.

14. The accessory activities and operations in the pro shop facility shall be limited to the following: golf, basketball and batting cage equipment rental, administrative office use, maintenance of equipment directly related to the driving range, miniature golf course, basketball and batting cage facilities, the sale of vending machine and snack bar concessions, a grill room occupying a maximum of 1,500

square feet of space, the sale of golf-related accessories, golf training including computer simulation exercises, recreational play room for children and community outings and birthday parties use.

15. There shall be no arcade games, video games, or juke boxes operation or present on the property.

16. The site may be used for activities directly related to the miniature golf course, golf driving range and baseball hitting cages only.

17. Ancillary easements for the future widening of Route 7 and Sugarland Road shall be provided as determined by DEM at the time of site plan approval.

18. Right and left turn lanes shall be provided at the site entrance to meet design standards as required by the Virginia Department of Transportation (VDOT). A site plan or minor site plan, as may be determined by the Director, DEM, shall be submitted within twenty-four (24) months of approval of this special permit depicting these turn lanes and shall be approved by DEM. These turn lanes shall be constructed prior to any Non-Residential Use Permit being issued for the expanded clubhouse and additional tees.

19. The applicant shall demonstrate to the Health Department that the septic system and well can adequately serve the use prior to the issuance of a Non-Residential Use Permit for the expanded clubhouse and additional tees, and the well cap should be adequately secure at all times. If this cannot be demonstrated, then this special permit is null and void.

The applicant shall address the subsurface drainage problems with the appropriate drainage and engineering designs as approved by DEM prior to site plat approval. Drainage from the batting cages discharge pump and surface water runoff shall be designed to drain into a vegetated swale consisting of appropriate infiltration soils to prevent water quality impacts downstream from the batting cages.*

- 20. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the watershed shall be implemented for this use. This program and plan shall provided for periodic monitoring and adjustment that demonstrates an intent to reduce the amount of nutrient, phosphate, and pesticide applied to the property over time. The design of this program and all monitored parameters shall be reviewed and approved by the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, the State Water Quality Control Board, the Environmental and Heritage Resources Branch, OCP and DEM prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be dept on site at all times. Records of all applications of pesticides and herbicides shall be dept, shall be made available to county staff on demand and shall be reviewed annually by the Environmental and Heritage Resources Branch, OCP.
- 21. The existing emergency access to Sugarland Road shall not be expanded.
- 22. A sign permit shall be obtained for any proposed or existing signs on this site.
- 23. A Non-Residential Use Permit shall be obtained for the existing miniature golf course, basketball court and existing tees, within 6 months of approval of this special permit.

These development conditions incorporate and supersede all previous development conditions. Previously approved conditions, including minor modifications to those conditions, are designated by 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 on the right and left turn lanes, enlarged pro shop and additional tees 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. DiGiulian and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 29, 1997. This date shall be deemed to be the final approval date of this special permit.

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NEESE APPEAL

Vice Chairman Ribble addressed the after agenda items. He asked William Shoup, Deputy Zoning Administrator, about the status of the Neese case. Mr. Shoup said the Board had a copy of a letter from James Determ, counsel for the Neeses, indicating that he wanted the appeal to apply just to 7805 Shell Horn Road, the second dwelling unit.

Vice Chairman Ribble asked Mr. Shoup if a report was to be before the Board from Zoning Enforcement as to whether the other violation has been cleared up.

Mr. Shoup said Zoning Enforcement has been out to the site on the other property. He said the property involves two issues, a junk yard/outdoor storage violation and an accessory structure violation. He said the outdoor storage/junk yard has been cleared but there is still an issue with the storage structure, which the appellants have indicated they will alter the structure to bring it into compliance.

Vice Chairman Ribble asked Mr. Shoup if he had any objection to the compliance and Mr. Shoup said he has no objection, if the Board would consider the appeal to be of the 7805 Shell Horn Road, second dwelling unit issue. He said in terms of scheduling, December 9th was suggested in his original memo, but since it was close to getting the packages out for that meeting. The meeting could be scheduled for the night of December 16, 1997, or December 23, 1997, because there was another appeal for that day or move the meeting into January, if it is the Board's intent.

Jane Kelsey, Branch Chief, Special Permit and Variance Branch, said she thought there were other cases to be heard on December 16, 1997.

Mr. Hammack moved to set the meeting on December 16, 1997, which is a night meeting. Mr. McPherson seconded the motion.

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Page 105, October 21, 1997 (Tape 1), Scheduled case of:

Approval of Minutes from the August 14, 1997, Meeting


Mr. Hammack moved to approve the Minutes. Mr. McPherson seconded the motion which carried by a vote of 5-0.

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

Minutes by: Ann-Marie Wellington

Approved on: January 20, 1998


Susan C. Langdon, Chief
Special Permit and Variance Branch


John F. Ribble, III, Vice Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 28, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble.

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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 107, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. LORRAINE COOPER JOHNSON, VC 97-B-076, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from side lot line such that side yards total 17.0 ft. Located at 4507 Fidelity Ct. on approx. 9,912 sq. ft. of land zoned R-3(Cluster). Braddock District. Tax Map 70-1((20))60.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lorraine Cooper Johnson, 4507 Fidelity Court, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a garage addition by enclosing an existing carport 7.5 feet from the side lot line. A variance of .5 feet was requested to the side yard requirement and a variance of 3 feet was requested to the total side yard requirement.

Lorraine Cooper Johnson, the applicant, stated that she wanted to enclose the carport for security reasons. She also stated that the addition would increase her property values.

Chairman DiGiulian asked the applicant if only a small corner of the existing carport would be closer than the 8 feet. The applicant replied, yes.

There were no speakers either in support or in opposition of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 97-B-076 for the reasons stated in the resolution.

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

LORRAINE COOPER JOHNSON, VC 97-B-076, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from side lot line such that side yards total 17.0 ft. Located at 4507 Fidelity Ct. on approx. 9,912 sq. ft. of land zoned R-3(Cluster). Braddock District. Tax Map 70-1((20))60. 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 28, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony that the lot is characterized by an unusual location of the house on the lot and the variances requested are 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 a garage addition (enclosure of existing carport) shown on the plat prepared by Richard H. Bartlett, dated September 29, 1992, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. McPherson seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 1997. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. ROBERT L. HERNDON & KATHERINE A. KENNEDY, VC 97-P-075, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.6 ft. from rear lot line. Located at 10004 Oakton Plantation Ct. on approx. 11,333 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1((45))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. Robert L. Herndon, 10004 Oakton Plantation Court, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a screened porch addition, 16.6 feet from the rear lot line. A variance of 8.4 feet was requested.

Robert L. Herndon, the applicant, stated that there were various things that were unique to his property. He stated that the property is located in a cul-de-sac and appears as a corner lot. As a result of that, most of his yard is on the front and side of the house and a minimal amount of yard in the rear. He stated that if he were to meet the 25 foot standard, the screened porch would only be three-feet wide. When he bought the property, he did not recognize that the Ordinance only allowed 25 feet.

Mr. Herndon stated that he has a health condition, basil cell carcinoma, a skin induced cancer, in which he was advised by his dermatologist that the more sunlight he is exposed to, the more it will exaggerate his condition. Therefore, the shade from the screened porch would allow him to enjoy outdoors.

He claimed that the addition did not set a precedent in the neighborhood and it would add value to his property and to the community. He also stated that his request had been approved by his neighbors and the homeowners' association. He requested an 8.4 variance which would satisfy all requirements in the County Ordinance. In conclusion, he stated that his request was warranted and respectfully asked that the Board approve his application.

There were no speakers either in support or in opposition of the application.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 97-P-075 for the reasons stated in the resolution.

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

ROBERT L. HERNDON & KATHERINE A. KENNEDY, VC 97-P-075, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.6 ft. from rear lot line. Located at 10004 Oakton Plantation Ct. on approx. 11,333 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1((45))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 October 28, 1997; and

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

1. The property of the applicant has an unusual lot configuration which allows for a little depth in the rear yard and for other reasons set forth by Mr. Herndon in his presentation to the Board.
2. The applicant has 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 screened porch addition shown on the plat prepared by Edward L. Johnson, dated July 29, 1997, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 1997. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARK J. STADSKLEV, VC 97-D-074, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.9 ft. from side lot line. Located at 6647 Hallwood Av. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4((5))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. Mark J. Stadskev, 6647 Hallwood Avenue, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a garage 0.9 feet from the side lot line. A variance of 9.1 feet was requested.

Mr. Stadskev, the applicant, stated that the reason for requesting the variance was because his lot is exceptionally narrow, 62 feet wide, and the placement of I-66 which caused the end of Hallwood Avenue to be truncated. He stated that he and his neighbor experience logistical problems getting out of their driveway because of the guardrail that was placed near his property. He claimed to have hit the guardrail three times trying to get out of his driveway over the last five years. He stated that the addition would enable more off-street parking. During times when the street has to be cleared of snow, the addition would allow him to park in his garage and off the street. He stated that his addition would blend in with the current structures in the neighborhood. He stated that there was no opposition from neighbors as far as he knew.

Mr. McPherson asked the applicant to provide to the Board the letter of support from Mr. Hagar. The applicant submitted the letter to the Board. Mr. McPherson asked about the other variances that the applicant mentioned, the most severe being 4 feet from the lot line, stating that he was concerned about the fact that the applicant's addition would be 1 foot from the lot line. It was noted that I-66 was already in place when the applicant purchased his property. Mr. McPherson wanted to know if there was anything that his neighbors had done to coordinate some solution to what the perceived safety problems were with regard to access to the lots or off-street parking. The applicant replied, not to the best of his knowledge. Mr. Stadskev stated that his neighbor paved most of his front yard to give turning access, but that his neighbor owned more than one car.

Mr. McPherson wanted to know if there was anyplace else that the applicant could put the garage and he also wanted to know how tall the addition would be. Mr. Stadskev stated that there would be a storage room over the garage, that it would be 22 feet high. He stated that his architect stated that there was no other place to build the garage.

There were no speakers either in support or in opposition of the application. Chairman DiGiulian closed the public hearing.

Mr. McPherson asked that the letter from Mr. Hagar, dated June 30, 1997, be made part of the public record.

Mr. McPherson made a motion to deny VC 97-D-074 for the reasons stated in the resolution.

Mr. Hammack stated that it was almost impossible for an owner of property to maintain property when it is only nine-tenths of a foot from the property line without trespassing. He stated that whereas the property owners may be on good terms now, the Board has to think in terms of the future when the property is sold and there are new owners. He stated that nine-tenths of a foot is too close. He stated that although he had sympathy for the applicant, the applicant just had not met the standards under the Ordinance.

The applicant asked if the Board could recommend a width for the structure that would be acceptable. Mr. Hammack stated that he did not see a width that would satisfy the Board at that location. With a 14 foot garage, the applicant would need a minimum of 12 feet. The 36 foot length, the addition being a deep garage, and having a second story, impacts on the adjacent property.

Mr. Stadskev stated that he would scale down the addition to 12 feet, which would be the most narrow that would make sense as a structure which would keep it 3 feet off the side lot line. Mr. Hammack stated that he would want to know more about the elevation because it was a very deep garage. Mr. Hammack stated that normally, speaking for himself, he would rather see things further off the line. He stated that he did not

know the opinion of the other Board members. There was no further discussion.

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

MARK J. STADSKLEV, VC 97-D-074, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.9 ft. from side lot line. Located at 6647 Hallwood Av. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4((5))8. 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 28, 1997; and

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

1. The structure is too large and too close to the lot line.
2. The applicant has not met the necessary standards for the granting of a variance based on the information provided in the staff report and the information provided through the testimony of the applicant.

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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 1997.

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Page 113, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOEL L. AND VALERIA M. FISHER, VC 97-B-078, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 4033 Olley La. on approx. 15,762 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-((22))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. Joel L. Fisher, 4033 Olley Lane, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a garage 7.2 feet from the side lot line. A variance of 7.8 feet was requested.

Joel Fisher, the applicant, stated that he has lived in his house for 20 years. Last year he suffered two heart attacks and had two bi-pass surgeries. He stated that his driveway is a hazard during snow and ice. His wife suffered a dislocated hip which is currently being surgically corrected. The garage would allow for safer access to both cars.

Mr. Ribble stated to the applicant that in the applicant's written justification, he mentioned the 4 to 7 foot grade, the topographic difficulties, and also the situation concerning the traffic and his driveway. Mr. Fisher stated that his house is located on the end of a second lane of northbound traffic on Olley Lane. He stated that all traffic is merged going up the hill into a single lane. There is a blind left-hand turn at the edge of the tree line coming down the hill in the southward direction. His driveway is at the bottom of the hill coming down south of Olley Lane. During inclement weather, snow fall, Metro buses have been trapped there several times, skidding across the landing in his driveway and have had to be removed by tow trucks. These types of incidents compound access to the driveway during the winter.

There were no speakers either in support or in opposition of the application. Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 97-B-078 for the reasons stated in the resolution.

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

JOEL L. AND VALERIA M. FISHER, VC 97-B-078, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 4033 Olley La. on approx. 15,762 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-((22))1. 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 28, 1997; and

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

1. The applicant has met the standards required for a variance, in particular, the topographic difficulties and the extraordinary situation as to traffic adjacent to the applicant's 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 a garage addition shown on the plat prepared by Kenneth W. White, dated November 20, 1996, as revised through July 23, 1997, 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 November 5, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 115, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK T. BOWIE, VC 97-M-081, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 7019 Kenfig Pl. on approx. 14,300 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1((22))(E)2.

Chairman DiGiulian remarked to staff that notices were not in order. Julie Schilling, Staff Coordinator, replied that the notice package was not picked up by the applicant and was returned to the zoning office. Mr. Bowie was out of town when the package was delivered. She suggested February 24 as a new date to conduct the hearing. She stated that the applicant had indicated that he would be out of the country for the entire month of December. In order to allow for the applicant to pick up the notice package or be present for the hearing, a February hearing date was suggested.

Chairman DiGiulian asked Mr. Bowie if February 24 was acceptable to him, in which he replied that it was.

Mr. McPherson moved that the case be moved to February 24. The motion was seconded by Mr. Pammel which carried by a vote of 7-0.

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Page 115, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH C. & JOYCE A. BLUE, VC 97-D-080, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 6829 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2((4))(I)14, 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 Baskin, attorney for the applicant, 301 Park Avenue, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit an existing carport to remain within the front yard of a lot containing less than 36,000 square feet. A Notice of Violation had been issued for construction of a detached carport without a building permit.

Mr. Baskin, attorney for the applicant, stated that Mr. and Mrs. Blue acquired the property in 1974 which was a vacant lot at that time. The house was built a year later. When they built the house, they poured the footing for the construction of the carport but did not build it at that time. The carport was built in 1985. He stated that it was an oversight on the part of the Blues that the permit was not obtained. He stated that they did not recognize that a permit was required.

Mr. Baskin stated that the variance was requested because of the exceptional narrowness and small size of the lot. The property is so narrow that the house is turned sideways on the lot so that the side of the house faces the road. He stated that the existence of the carport has no serious adverse effects on the neighboring properties.

Mr. Baskin presented to the Board a petition signed by 21 of Mr. Blue's neighbors which includes several of the persons that were notified by notices and the neighbors directly affected by the presence of the carport.

He also submitted to the Board several photographs. He stated that the conditions created by the exceptional narrowness of the lot and small size of the lot creates a hardship that justifies the variance. He stated that there was no serious impact to the remaining property owners and that the character of the district would not be changed. He stated that the granting of the variance would alleviate the hardship.

Mr. McPherson stated that in looking at the photos, the carport straddles the driveway. He wanted to know the history of the expansion of the driveway from the time the applicant first started building the house. Mr. Baskin stated that he was not aware of the history. Mr. McPherson stated that he was concerned as to what the Board would do if he were to come before the Board the following week with another client from the same subdivision asking for the same thing. Mr. Baskin stated that many of the homes in the subdivision enjoy larger lots and are not faced with having small lots with exceptional narrowness. He stated that the narrowness limits the useable space to the front and rear of the lot as well.

Mr. Kelley asked staff why the application was a variance rather than an error in building location. Staff replied that it was the applicant's choice to file for either a variance or special permit for error in building location for the carport. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that normally staff would suggest to the applicant that a special permit would be more appropriate, but that staff did not talk to the applicant prior to his submitting the application. Ms. Kelsey stated that the property was in violation but was not aware of what the zoning inspector reported. Mr. Baskin stated that the notice that went to the property owner directed that the violation be cleared either by removing the structure or by making an application for a variance.

Ms. Kelsey stated that the zoning inspector who was present at the hearing, reminded her that the structure was an accessory structure in the front yard and that the special permit for building in error is to the bulk regulations for yards and not to something which is prohibited in the front yard. A structure in a front yard is under a different provision of the Zoning Ordinance and that is why it is a variance rather than a special permit.

Mr. Hammack asked Mr. Baskin whether the structure was included in the original building permit. Mr. Baskin replied that he did not know. He stated that Mr. Blue had a plat that showed the proposed carport but could not locate it. Ms. Kelsey stated that the zoning inspector had a copy and that it did not show the location for the foundation for a carport or any other structure in the front yard.

There was discussion between the Board, staff and Mr. Bowie regarding whether the structure was attached. It was unclear as to whether the structure was an attached structure. The zoning inspector stated that during his inspection, he did not see a common wall attaching the accessory structure to the house and roof. Ms. Kelsey asked that the case be deferred for one week until the matter could be discussed with Bill Shoup, Deputy Zoning Administrator. Mr. Kelley stated that he would have difficulty voting for the application as a variance because, he stated, that if it was not already built, they would not even consider it.

There was a discussion between the Board and staff regarding whether the case would have to be re-advertised and re-noticed. Mr. Dively wanted to know if the applicant would be able to proceed on an error in building location if it were appropriate. Susan Langdon stated that it would have to be re-noticed which would give it a different application number. Mr. Pammel stated that he was not aware of any application heard by the Board where the error or the structure was actually on the property line. He stated that because of the zoning laws, these things were not done. If errors were made, the errors were usually engineering errors. He stated that this case was blatant because the structure is already on the property line and the applicant is now coming before the Board to ask for relief. He stated that if this were approved and a building permit was not obtained, there would be thousands of people in the County building structures without permits and when they are notified of the violation, they would then come before the Board and ask for relief. Mr. Hammack stated that the applicant knew that he needed a building permit to build his residence and turned around and built an accessory structure without a building permit.

Mr. Baskin stated that the size and shape of the lot and all the factors contained in the statement of justification support and justify the variance particularly when the lack of objection by the immediate neighbors are considered. He went on to state that if the application is denied, Mr. Blue may be able to come into compliance by removing the roof of the structure or portions of the structure without removing the entire structure which would be a bad result.

Mr. Shoup, Deputy Zoning Administrator, stated that he would need to take a look at the structure before he could make a determination and after looking at the photos, he stated that he could not tell. He did state that because of the wall that enclosed the structure, it would not be deemed to be a carport. The Board asked what it would be, in which he replied, a garage for lack of a better term. Mr. Dively asked if that were true, would it have to be re-noticed. Mr. Shoup stated that it was advertised as an accessory structure.

Mr. Shoup suggested that the application be reevaluated. Chairman DiGiulian asked how much time would be needed, in which Mr. Shoup replied one week to determine what they believed it to be but if it turns out to be a structure that needs to be re-advertised, then they would need more time.

Mr. Kelley moved that the Board defer the case until the following week. The motion was seconded by Mr. Ribble and Mr. Hammack. The motion carried unanimously.

Ms. Kelsey suggested 9:00 a.m. on November 4.

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Page 117, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS H. HEMPHILL, VC 97-D-077, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.2 ft. from front lot line and 20.2 ft. from rear lot line. Located at 1654 Kirby Rd. on approx. 10,958 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3((1))124.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas M. Hemphill, 109 Buxton Road, Falls Church, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested two variances to construct a two-story addition. The addition would be 27.2 feet from the front lot line, therefore, a variance of 12.8 feet was requested. The addition would be 20.2 feet from the rear lot line, therefore, a variance of 4.6 feet was also requested. The proposed addition included a garage and the applicant planned to construct a driveway from Kirby Road to the garage and to delete the common gravel drive indicated on the plat.

Mr. Hemphill, the applicant, stated that his application was actually a re-application. He stated the following hardships: the extreme narrowness and shallowness of the property, the fact that the lot is substandard in terms of width, the sanitary sewer on the right side yard which limits construction on the property, and the inadequacy of the current driveway for parking as a shared driveway. He stated that the plan was revised to accommodate the neighbor on the left side, moving the garage to the other side of the property which remedied the concerns of that neighbor. He also eliminated the rear deck which was a concern for the neighbor in the rear. The proposed construction will encroach less on the front and rear yards than the construction previously proposed. Due to the hardships outlined and modifications made, he stated that the application is justified under the guidelines.

There were no speakers in support of the application.

A neighbor at 1656 Courtney Road, supported the application but expressed concerns about deleting the common gravel driveway. She said that she did not want her view blocked when trying to get on to Kirby Road and did not want any objects or obstructions to be installed.

Mr. Hemphill responded by saying that his plan was to have no obstruction whatsoever to the driveway.

Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to approve VC 97-D-077 for the reasons stated in the resolution.

Mr. Pammel commented that the present structure and addition proposed by the applicant did not come any

closer to the property line than the existing structure, so the encroachment into the required yard was not exacerbated by the proposed addition. He stated that the applicant did an excellent job with the modifications.

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

THOMAS H. HEMPHILL, VC 97-D-077, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.2 ft. from front lot line and 20.2 ft. from rear lot line. Located at 1654 Kirby Rd. on approx. 10,958 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3((1))124.

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 1997; and

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

1. The applicant has done a good job modifying their plan which shows the flexibility of the applicant to reach their objective and at the same time fit in with the neighborhood and do something of worth to their lot.
2. The applicant has met the necessary standards for the granting of a variance as requested.

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

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

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

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

would 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 two-story addition shown on the plat prepared by Kenneth W. White, dated November 20, 1996, revised through June 26, 1997, 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 November 5, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 117, October 28, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MESSIAH PRESBYTERIAN CHURCH OF WASHINGTON, SP 97-B-036, Appl. under Sect(s) 3-303 of the Zoning Ordinance to permit nursery school. Located at 4313 Markham St. on approx. 1.27 ac. of land zoned C-6, C-8, HC, SC. Braddock District. Tax Map 71-1((1))8, 9, 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. Steven Eun, Pastor of Messiah Presbyterian Church of Washington, 8705 Sheraton Farm Court, Springfield, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a special permit for a Group 3 use to establish a nursery school with a maximum daily enrollment of 20 children. The open space would be used as an outdoor play area. Staff recommended approval of the application.

Steven Eun, Pastor of Messiah Presbyterian Church of Washington, stated that he understood that the proposal was subject to Appendix 1 and that the applicant planned to fully comply with the proposed development conditions. He stated that Condition #7 required the outdoor play area had to be relocated to the concrete area which is located near the front entrance of the church building. He asked the Board to reconsider leaving the play area as is and to allow the applicant to put a four-foot high fence and also to resurface the area.

There was a discussion between Mr. McPherson and the applicant regarding the number of sessions provided by the nursery school. Mr. Eun stated that there would be two sessions, one session from 9 a.m.-12 p.m. and the other would be from 1 p.m.-5 p.m.

Mr. Dively asked staff to comment on deleting Condition #7. Ms. Powell stated that the purpose of Condition #7 was to make the play area more convenient to the nursery school and also to make it safer. Enrollment was originally ten children per session and the existing play area was not large enough to

accommodate ten children at one time. She stated that it would not be an issue for denial but that staff's preference was to relocate the play area.

There were no speakers either in support or in opposition of the application. Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to approve SP 97-B-036 for the reasons stated in the resolution.

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

MESSIAH PRESBYTERIAN CHURCH OF WASHINGTON, SP 97-B-036, Appl. under Sect(s). 4-603 and 4-803 of the Zoning Ordinance to permit nursery school. Located at 4313 Markham St. on approx. 1.27 ac. of land zoned C-6, C-8, HC, SC. Braddock District. Tax Map 71-1((1))8, 9, 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 October 28, 1997; and

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

1. It is an appropriate use.
2. Staff's recommendation regarding the outdoor play area is appropriate.

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, 4313 Markham Street (1.27 acres), and is not transferable to other land. The existing by-right church use continues to be permitted.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Kenneth W. White, dated April 28, 1997, revised through July 10, 1997, 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 of the nursery school shall not exceed twenty (20) children.
6. The normal hours of operation shall be Monday-Friday, 8:00 a.m. to 5:00 p.m.

7. The outdoor play area shall be relocated to the area of six parking spaces near the "covered concrete area," adjacent to the building and the proposed nursery school shown on the plat dated April 28, 1997, revised through July 10, 1997. This relocated play area shall be shown on the site plan submitted to DEM.
8. The equipment in the outdoor play area shall be repaired or replaced and the play area shall be surfaced with a material which is approved by the State Department of Social Services.
9. The outdoor play area shall be surrounded by a four foot high fence.
10. The dumpster shall be located in the northeast corner of the site and shall be screened. The dumpster shall be shown on the site plan submitted to DEM.
11. Existing peripheral and interior parking lot landscaping shall be retained and shall be shown on the site plan submitted to DEM.
12. The existing public ingress-egress easement shall be retained along Markham Street, as shown on the plat, and shall be shown on the site plan submitted to DEM.
13. Parking shall be provided for all the uses on site and shall meet the minimum Zoning Ordinance requirements. Seven (7) parking spaces shown on the plat may be removed in order to provide for the relocated play area and the dumpster. All parking shall be on site. The number of seats in the church may increase if the minimum number of parking spaces is provided for all uses on site.
14. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
15. The nursery school cannot be established until a Non-Residential Use Permit (Non-RUP) has been issued.

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 Non-RUP has been issued for the nursery school. 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 5, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 121, October 28, 1997, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE KYRIACOU, Appeal A 96-L-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a showroom which displays architectural stone and tile products is not permitted as part of an office use, nor is it a permitted use in the C-3 District, and therefore is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8306 Richmond Hwy. on approx. 1.17 ac. of land zoned C-3, C-8 and HC. Lee District. Tax Map 101-4((4))14B. (MOVED FROM 3/11/97. Def. From 5/13/97)

Chairman DiGiulian stated that the Board issued an intent to defer on October 7 and asked staff if they had

a new date. William Shoup, Deputy Zoning Administrator, suggested February 17, 1998.

Mr. Pammel moved to defer until February 17, 1998. The motion was seconded by Mr. Ribble. The motion carried by a vote of 7-0.

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9:30 A.M. ROBERT F. WHEELER, TRUSTEE, Appeal Appl. A 1997-MV-016 under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a storage yard and a junkyard in the R-1 District, all in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8270 Silverbrook Rd. on approx. 8.6528 ac. of land zoned R-1. Mount Vernon District. Tax Map 107-1((1))1. (DEF. FROM 8/5/97)

William Shoup, Deputy Zoning Administrator, stated that the appeal involved a storage yard/junk yard violation. He stated that Mr. Spence had just been recently retained by the appellant and that he was there to request a deferral to the appeal.

Mr. Spence, attorney for the appellant, stated that he had just been retained by the appellant and had not had the opportunity to talk to staff about the case. He stated that there were some avenues that he wanted to discuss with staff regarding resolving some of the issues presented which could possibly bring the property into compliance. He requested that the Board give three months in order for him to do that.

Mr. Shoup stated that even though the appeal had been around for quite some time, he felt that there was merit in allowing the additional time for Mr. Spence to discuss the issues with staff. He stated that Mr. Spence indicated that the appellant had cleared some of the violations. Mr. Shoup stated that he wanted the opportunity for staff to get on to the property to verify what had been taken off the property and to discuss what it would take for the appellant to comply. He stated that he would concur with a relatively short deferral to January 27, 1998, with a commitment from the appellant that inspectors and staff could enter the property to view what is there. Mr. Spence stated that he would give that commitment but would rather staff enter the property by appointment only.

Mr. Dively moved to defer until January 27, 1998, at 9:30 a.m. The motion was seconded by Mr. Ribble. The motion carried by a vote of 7-0.

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Approval of July 29, 1997, Minutes

Mr. Hammack made a motion to approve the July 29, 1997, Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Approval of September 9, 1997 and September 16, 1997, Minutes

Mr. Dively made a motion to approve the September 9, 1997 and September 16, 1997, Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Request for Reconsideration for Clifton Paul & Nancy Craven
Appeal A 96-P-049

Chairman DiGiulian stated there was a letter submitted by R.B. Chislom and a letter from the Chairman of the Board of Supervisors requesting a reconsideration. He asked Mr. Hanes, attorney for the appellant, to speak on that.

Mr. Grayson Hanes, stated that staff provided him with a copy of Mr. Chislom's letter and the letter from Chairman Hanley. He stated that Mr. Chislom would not meet with him and that Mr. Chislom indicated that he was very much opposed to the application. He stated that what he had submitted was submitted to staff and to the Board of Zoning Appeals and was in response to the staff's memo to the BZA the week before. With respect to Chairman Hanley's letter, he indicated that it reflected staff's position which was already presented at the hearing, argued both by Mr. Shoup and the County attorney. To make the record clear, he asked that the Board make the video of the structures, which was shown at the hearing in July, part of the record. He stated that Mr. Ribble indicated that he viewed the tape and the record and asked if Mr. Ribble would indicate that for the record. He added that nothing new had been presented and asked that the Board deny the request for re-hearing.

Mr. Hanes submitted the video to the Board for the record.

Jane Gwinn, Zoning Administrator, stated that the letter from the Chairman of the Board of Supervisors spoke for itself, that the Board of Supervisors (BOS) wanted to express its concern about impact of the BZA's decision and asked for reconsideration.

Mr. Dively commented that the letter was from the Chairman and not from the BOS. Ms. Gwinn stated that the Chairman signed on behalf of the BOS, that there was a motion passed by the BOS asking for reconsideration. Mr. Dively asked what the vote was, in which Ms. Gwinn replied that she did not know. Mr. Dively wanted to know if there was any case laws on modifying appeals or any standards or restrictions, to which Ms. Gwinn replied that there may be, but that she did not know what they were. Mr. Dively wanted to know if they were creating new case law. Mr. Greenhan, Assistant County Attorney stated that he did not know whether they were creating new case law, but that the decision as it stood was creating something new. Mr. Dively wanted to know if there were any kind of precedence on modifying appeals. He stated that it was authorized in the statute, but wanted to know if it had ever been reviewed by any of the courts. Mr. Greenhan stated that he had never run into this type of situation. Mr. Hanes commented that he did not know of any case that would address the issue.

Mr. Kelley moved to reconsider in six months and stated that the case had been around for a long time in one form or another. He stated that it was incumbent upon the Board of Zoning Appeals when they have been requested by the BOS to reconsider, that they should give it serious consideration.

Mr. Kelley stated that everyone seems to agree that Craven should not be shut down, but they would not get together to discuss it. He stated that the BOS in their letter stated that the BZA usurped its authority. He did not think that the BZA did but felt that the BZA should look into it more seriously. He stated that he felt it was a very serious matter. He stated that the applicant should file for a special exception. He stated that he thought that there should be another motion that would respectfully request the BOS to waive the five-acre requirement so that the appellant could file for a special exception. He asked staff if they would be favorably disposed to recommend that the BOS waive the 5-acre requirement. Ms. Gwinn stated that she could not speak on behalf of staff. She said that they could accept the application without it meeting the five acres, that they could file it with a request to modify the five-acre requirement. Mr. Kelley stated that if it were accepted by the BOS, he thinks that they would be in the best possible place. He stated that the whole problem cries out, in his view, for a legislative or political solution, one that is not made in a judicial forum. He moved to reconsider the decision in six months. Mr. Pammel seconded the motion.

Mr. Pammel stated that although he was not present when the summation and decision was made on both sides, he stated that he would like to have the advantage of that and that the reconsideration would afford him that opportunity. He suggested that if there had been stonewalling with respect to listening on both sides, he urged that everybody get together and discuss the issues and try to arrive at a position that both sides could be comfortable with.

The motion carried by a vote of 5-2. Mr. Dively and Mr. McPherson voted nay.

Mr. Shoup suggested the night meeting of April 21. Mr. Dively requested that counsel on both sides give legal opinions on the BZA's authority, specifically, regarding making modifications on appeals.

Mr. Kelley moved that the BZA respectfully request that the BOS waive the five-acre requirement and hear the special exception. Mr. Hammack seconded the motion which carried by a vote of 7-0.

Mr. Hanes stated that the appellant committed to a number things, expensive items such as building fences, and would hold those in abeyance until a ruling is made in April.

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Page 124, October 28, 1997, (Tape 1), Action Item:

Approval of October 21, 1997, Resolutions

Mr. Dively moved to approve the October 21, 1997, Resolutions. Mr. Kelley seconded the motion. Mr. McPherson moved to exclude Craven's reconsideration resolution. The vote carried by 6-0. Mr. Pammel abstained.

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There was a discussion between the Board and Jane Kelsey, Chief, Special Permit and Variances Branch, in reference to a bill received by Mr. McCormick for Carvallo vs. The Board of Zoning Appeals, which is being appealed to the Supreme Court. One or more of the Board members requested that Mr. McCormick file a brief on behalf of the Board of Zoning Appeals, however, it was never a Board action. Since there was a bill to be paid for services, it was requested that the Board take the appropriate action and make a motion.

Mr. Dively asked what the appropriate action would be. He asked whether they should recommend that the County pay the bill or did they have the power to direct the County to pay the bill. Ms. Kelsey said that the best course of action would be for the Board to make a motion requesting that Mr. McCormick perform the services. She stated that the amount of the bill would be approximately \$4,500 and that so far, \$3,500 had been billed.

Mr. Hammack stated that Mr. McCormick represented the Board in the appeal before the Circuit Court and that he had asked him to prepare a brief. He stated that Mr. McCormick had operated in good faith in preparing a brief representing the BZA. He stated that the County did not appeal the decision, it was only the aggrieved party that did. He stated that he had been sent a copy of the brief and felt that it was well written. Mr. Hammack retroactively moved that they authorize or request Mr. McCormick to perform the services that he has performed and that the County pay for those services. Mr. Dively seconded the motion.

Mr. McPherson asked if they were to assume that the decision had been decided by the Board that they wished counsel to go forward with the appeal. Mr. Hammack stated that he remembered that the Board deferred for lack of having a full Board and other situations that arose. He stated that the Board wanted Mr. McCormick to represent the Board in Circuit Court in the original appeal and then further represent the Board on the appeal to the Supreme Court. He thought that it would be inconsistent if he did not represent them in both instances. He stated that this particular appeal was listed as Number 37 on the Docket for the next month, that Mr. McCormick may be required to go down to Richmond and argue the case within a week or two. He stated that Mr. McCormick had represented them in the past and that the Board should support him on this issue especially since he asked him to do it.

Mr. McPherson stated that it does not necessarily follow that because Mr. McCormick actively participated in the case in Circuit Court, that he had to participate in the appeal. The concern was the manner in which it occurred more than content.

The motion carried by a vote of 7-0.

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There was a discussion between Board members regarding why the Craven case was eliminated from the resolutions. Mr. Kelley stated that it was just modified and that it was a true and accurate record. He stated that the Board voided the action and that if it was moved to approve it, then the approval would be on record which could be challenged. Chairman DiGiulian stated that an action was taken last week and a resolution passed. He stated that the Board could approve the resolution and take a separate action to reconsider that action on this day. Mr. Dively stated that when a case is reconsidered, the case has been opened back up for testimony, legal argument, that the action has been set aside. Mr. Hammack stated that Mr. Hanes conceded by saying that they would not do anything to implement the development conditions that were imposed on them until the hearing in April. Mr. Pammel stated that it could be argued that the Board reversed itself by approving the resolution. He stated that he thought that it was best the way it was and that the Board should go forward and have the hearing and not create anymore problems. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that there was a legal opinion on the issue from the County Attorney's Office which stated that if you make a motion to reconsider, that resolution or motion is not final until the action has been reconsidered.

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Mr. Kelley stated that there was an information item on Inppencott dealing with notification of events at the community swimming pool where they were not notified. He asked if staff would check into the issue and find out if the conditions of their permit are being violated. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that they would do so.

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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: Denise Snyder

Approved on: December 23, 1997

Susan C. Langdon
Susan C. Langdon, Chief
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 November 11, 1997. 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.

Mr. Ribble announced that Betsy Hurtt, Clerk to the Board of Zoning Appeals, was going to be leaving the County after 12 years. He said Ms. Hurtt began her career with the County as Associate Clerk to the Planning Commission and transferred to the Board of Zoning Appeals as Deputy Clerk. Mr. Ribble said Ms. Hurtt was appointed Clerk to the Board of Zoning Appeals in 1988. He added that she has been extremely helpful to the BZA and the citizens of the County in performing her duties and wished her well in her future endeavor on behalf of the BZA.

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Page 127, November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. MERCHANT'S INCORPORATED, VC 97-Y-085, Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of building 17.0 ft., 5.0 ft. and 29.0 ft. from street lines of a corner lot. Located at 13900 Lee Hwy. on approx. 35,020 sq. ft. of land zoned C-8, HC, SC, WS. Sully District. Tax Map 54-4((1))53, pt. of 50, pt. of 51A, pt. of 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's agent, John Grimsley, 9703 Euclid Avenue, Manassas Virginia, replied that it was.

Susan Langdon, Senior Staff Coordinator, made staff's presentation as outlined in the staff report. She said the applicant was requesting approval of variances 23 feet, 35 feet, and 11 feet from front lot lines in order to construct a vehicle light service establishment. Ms. Langdon outlined the background of the case by stating that a special exception was approved by the Board of Supervisors in 1992 to allow a vehicle light service establishment on the lot, which required approval of a variance. The BZA approved the variance in 1992 and this request is identical to that application. Ms. Langdon said additional time was granted for the special exception until 1999 but the structure has not been constructed; therefore, the applicant is before the BZA at this time to request approval of an identical variance.

Mr. Grimsley explained that the applicant made a request to the Board of Supervisors for additional time for the special exception, but inadvertently overlooked the necessity for making the same request to the BZA for the variance. He added that this is the same application approved by the BZA in 1992.

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

Mr. Hammack made a motion to approve VC 97-Y-085 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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

MERCHANT'S INCORPORATED, VC 97-Y-085, Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of building 17.0 ft., 5.0 ft. and 29.0 ft. from street lines of a corner lot. Located at 13900 Lee Hwy. on approx. 35,020 sq. ft. of land zoned C-8, HC, SC, WS. Sully District. Tax Map 54-4((1))53, pt. of 50, pt. of 51A, pt. of 55. 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 11, 1997; and

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

1. The applicant is the owner of the land.
2. The Board of Zoning Appeals previously granted the applicant an identical variance and this is merely a re-visitation of the request on the part of the Board.
3. The area is highly congested.
4. It was merely an oversight on the applicant's part that the variance was allowed to expire.
5. The facts that existed when the previous variance was approved still exist; therefore, there is no reason for the Board not to approve 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 and the specific structure shown on the plat prepared by Richard F. Polk, dated March 27, 1997, 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. All development conditions imposed upon the subject property pursuant to SE 87-Y-035 shall be incorporated into this variance approval and are attached as Attachment 1.

Pursuant to Sect. 18-407 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 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 November 19, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 129, November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. JOAN K. & HARRISON G. WEHNER, JR., VC 97-D-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lots 2 and 3 having a lot width of 1.0 ft. Located at 9601 Georgetown Pi. on approx. 8.24 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))72D. (RECONSIDERATION GRANTED ON 6/10/97) (DEF. FROM 9/30/97 FOR DECISION ONLY)

Chairman DiGiulian noted that the case was deferred for decision only with each side having five minutes for summation.

The applicant's attorney, Grayson Hanes, with the firm of Hazel & Thomas, came forward and said John Ofelder, President of the Great Falls Citizens Association, would share his five minutes and relinquished the floor to Mr. Ofelder.

Mr. Ofelder said the Association has consistently and vigorously opposed variance requests for pipestem lots as a general rule. He said when the Wehners came to the Great Falls Citizens Association's Executive Committee last spring the Committee reviewed the request and believed that the application met the modified policy that the Committee was then implementing. Based upon that policy, the Committee wrote a letter to the BZA supporting the Wehners' application stressing the applicant's willingness to give up some by-right density and the added benefit of the private driveway off of Georgetown Pike rather than another public "stub" street. Mr. Ofelder said the Association would like to maintain the historical and scenic character of the area; therefore, it would like to alleviate adding any additional "public stub streets". He added that following the BZA's decision to reconsider its action to deny the application, the Executive Committee again met with the citizens and applicant to review the application and following that meeting the Committee reiterated its position to support the request.

Mr. Hanes said since the meeting on September 30th there have been approximately 40 letters placed in the record in support of the application from the surrounding property owners and a letter in support from the Fairfax County Historic Commission. He noted that the applicant could develop the lot into four lots and added that a plat has been submitted into the record depicting how the property would look if it were developed by-right. Mr. Hanes used the viewgraph to show the surrounding neighbors who either support the request or who have no objections to the request. He clarified for the record that the development costs for the road would be \$214,000 rather than the amount that he had previously stated and reiterated his comments from the previous public hearing addressing hardship. Mr. Hanes asked that Condition Number 2 be revised to give the Department of Environmental Management the option to grant the applicant a waiver of the dustless surface if it was the BZA's intent to grant the application.

Cathy Milks, 9641 Georgetown Pike, Great Falls, Virginia, came forward to oppose the application. She called the BZA's attention to the documents submitted on behalf of the citizens and briefly addressed each section contained in the binder. Ms. Milks said the applicant had not met Variance Standards 4, 5, 6, 7, 8, or 9 and called the BZA's attention to the section containing a highlighted map depicting the homeowners in the immediate neighborhood who are opposed to a pipestem development. Ms. Milks referenced the engineer consultant's report which supported the opposition's contention that it would not be economically

feasible for the Wehners to pursue developing a four lot subdivision, and in fact may not be legally possible. In conclusion, Ms. Milks reiterated the neighbors' opposition to the request which allowed the applicants to develop their property through a pipestem and asked the BZA to reaffirm its previous decision and deny the application. (A copy of this submittal is contained in the file.)

Mr. Pammel said there were some interesting aspects to the case and environmental concerns have brought the applicant before the BZA seeking a variance, but in looking at the Virginia Code he still believed that the applicants had not met the Standards set forth in Sect. 15-1.495 and the burden of proof is on the applicant. He believed the granting of the variance would be a special privilege or a convenience sought by the applicants to avoid the requirements of the subdivision code. Mr. Pammel then made a motion to deny the request.

Mr. Hammack seconded the motion. He concurred with the maker's comments and believed that it was a self-inflicted hardship since the applicants have done a lot of transferring of parcels around. He pointed out that in 1993 the BZA granted the request for the accessory dwelling unit to allow the applicants to remain on the property, and now they are reversing that position.

Chairman DiGiulian said he would not support the motion as he believed that things change particularly with respect to an accessory dwelling unit. He added that in looking at the tax map that he could not see anything that the Wehners have done that would make the parcel that they are trying to subdivide smaller so that they would not need a variance. Chairman DiGiulian noted that in less than a quarter of a mile he counted over 20 parcels that are developed on outlot roads or on pipestems, which he believed to be the nature of the area.

Mr. Hammack responded by saying that if an area already has a number of pipestems that would be a reason not to grant another. Chairman DiGiulian said he did not believe that was true when a hardship exists.

The motion failed by a vote of 3-4 with Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. McPherson voting nay.

Mr. McPherson made a motion to grant VC 97-D-027 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with Condition Number 2 revised as reflected.

Following the vote, Mr. Hanes asked that Chairman DiGiulian and Mr. McPherson indicate for the record that they had reviewed the video tape of the previous public hearing prior to voting on the application. Both members acknowledged that they had done so. Mr. Kelley said he did not believe it was necessary for the BZA members to make such an affirmation as it would set a bad precedent for future BZA action. The Chair agreed.

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

JOAN K. & HARRISON G. WEHNER, JR., VC 97-D-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lots 2 and 3 having a lot width of 1.0 ft. Located at 9601 Georgetown Pi. on approx. 8.24 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))72D. 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 11, 1997; and

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

1. The applicant is the owner of the land.
2. It is clear that the applicant has met the necessary standards for the granting of this particular variance.
3. The granting incorporates the testimony presented by the applicant's agent, a portion of the staff report, and the comments presented by those in support of the application.
4. Although the Board previously approved the applicant's request for an accessory dwelling unit, things may have changed since that time.
5. In looking at the tax map, it does not appear that the applicant has done any thing that would make the parcel that they are trying to subdivide smaller so that a variance would not be necessary.
6. Within a quarter of a mile of the applicant's property, there are approximately 20 plus parcels that are developed either on outlot roads or pipestems which appears to be the nature of the area.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 72D as shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated January 29, 1997. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual subject to any waiver or modification granted by the Department of Environmental Management for a dustless surface, stormwater management, or the Chesapeake Bay requirements.

3. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance. The minimal amount of clearing possible shall be allowed for construction of the driveway, and the dwelling and septic system on Lot 1, as determined by the Urban Forestry Branch during review of the overlots grading plan.
4. The subdivision plat shall note that the driveways shall be privately owned and privately maintained by the lot owners.

Pursuant 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 4-3 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. McPherson voting aye. Mr. Hammack, Mr. Pammel, and Mr. Ribble voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 19, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 132, November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BRYAN L. & KAREN H. KINSEY, VC 97-M-086, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the front yard of a lot containing less than 36,000 sq. ft. of land. Located at 6421 Sleepy Ridge Rd. on approx. 25,612 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3((7))43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants, Brian L. and Karen Kinsey, 6421 Sleepy Ridge Road, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. She said the applicants were requesting approval of a variance to permit the construction of a detached storage shed in the front yard of a lot containing less than 36,000 square feet.

Mr. Kinsey referenced the statement of justification submitted with the variance application. He explained that the shed will be located to the side and to the rear of the lot as far as possible from the two streets so that it will be as unobtrusive as possible. Mr. Kinsey said the lot has two front yards, the house is sited far back on the lot and pointed out the steep slope on the west side of the lot. He added that the existing storage shed, which was constructed by the previous owner, will be removed once the new structure is granted. Mr. Kinsey said the adjacent property owner has submitted a letter to the BZA stating that she has no objections to the request. He asked that the BZA waive the eight day waiting period if it was the BZA's intent to grant the request.

Mr. Ribble made a motion to grant VC 97-V-086 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report. The BZA granted the applicant's request to waive the eight day waiting period.

Mr. Pammel said the proposed shed would be located 2 feet from the lot line, but it was not clear as to what the height of the structure would be. Mr. Hammack replied 9 feet. The Chair asked staff for a clarification as to the required setbacks.

Susan Langdon, Senior Staff Coordinator, said the Zoning Ordinance states that a structure is not allowed in the front yard of a lot less than 36,000 square feet and the previous interpretation has been that a structure can be approved in a front yard, but that approval is based solely for location in the front

yard thus there are no setback requirements. Mr. Pammel asked if zoning would issue a permit for the structure and Ms. Langdon replied affirmatively. Mr. Hammack asked if that was a written interpretation. Ms. Langdon deferred to the Deputy Zoning Administrator, who was present in the Board Auditorium.

William Shoup, Deputy Zoning Administrator, came forward and explained that the interpretation was based solely on the fact that the Zoning Ordinance does not have a provision that addresses setback requirements in a front yard. He said it was staff's belief that if the BZA was concerned with the proximity of a structure to the lot line, the BZA would use its own discretion.

Mr. Pammel made a motion that the BZA reconsider its decision to grant VC 97-M-086. Mr. Hammack seconded. The motion failed by a vote of 3-4 with Mr. Hammack, Mr. Kelley, and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Dively, Mr. McPherson, and Mr. Ribble voting nay.

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

BRYAN L. & KAREN H. KINSEY, VC 97-M-086, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the front yard of a lot containing less than 36,000 sq. ft. of land. Located at 6421 Sleepy Ridge Rd. on approx. 25,612 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3((7))43. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 11, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance; in particular, the applicant cited the double front yards, the unusual topographical conditions of the lot, and the siting of the house 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 an accessory storage structure shown on the plat prepared by Larry L. Ichter, dated August 14, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained, if required, 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.

*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 November 11, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 134, November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SHELLY L. RIESTER, SP 97-S-045, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 9205 Dorothy La. on approx. 7,946 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-4((12))11A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Shelly Riester, 9205 Dorothy Lane, Springfield, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. She said the applicant was requesting approval of a special permit to allow a modification to the limitation on the keeping of animals to permit a hen to remain on a lot containing less than 2 acres. Ms. Smolko said the hen is kept in the rear yard in a 10 foot x 3.5 foot x 3 foot wire cage located immediately adjacent to the deck and the rear lot is enclosed by a 5 foot high wooden fence.

Ms. Reister said she is the mother of three girls, ages 10 years, 7 years, and 9 months and they would like permission to keep their pet hen, Night. She said the children have had their family pet for 2 ½ years and have cared for her since she was a chick as depicted in the photographs displayed by her daughter. Ms.

Reister said the pen is located next to the deck as far as possible from all of the lot lines which fulfills Par. 9 of Sect. 10-104 of the Zoning Ordinance. She added that Night's impact on the neighboring properties is less than that of a small dog as she does not crow and there is no barn yard odor. The applicant said 40 out of the 44 neighbors in the Glenwood Manor subdivision, Section II, known as Huntsman Estates, are not opposed to the keeping of the hen, with two neighbors abstaining, leaving only two neighbors who object to the hen. Ms. Reister said at the October 1st Huntsman Estates Civic Association meeting, the issue of Night was discussed and the Association had no objections. She said there was some concern about Night causing a decrease in property values and she outlined the improvements that they have made since purchasing the property in June of 1997. Ms. Reister asked that the children be allowed to keep their pet.

Mr. Ribble noted that one of the letters referenced "he" when they referred to Night. Ms. Reister clarified that Night is a hen, not a rooster.

Mr. Hammack asked the life span of a hen. The applicant replied that they have read that it is 3 to 5 years. Ms. Reister said Night is 2 1/2 years old and added that Night had been one of three chickens and the other two chickens have since perished.

Chairman DiGiulian called for speakers in support of the request.

The applicant's daughter, Lynn Reister, said she loved her pet and asked the BZA to allow her to keep Night.

The applicant's next door neighbor, Sue Sojka, 7414 Carath Court, Springfield, Virginia, said she has four children who are constantly outside and that she has never noticed any odor coming from the applicant's yard. She asked the BZA to allow Night to remain on the property.

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

Mr. Kelley made a motion to grant SP 97-A-045 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

Mr. Hammack made the observation that one chicken is 1/32 of a bird unit and if the applicant had 2 acres of land she could have 64 chickens on site; therefore, the applicant is way below the ratio.

Mr. McPherson pointed out that four beehives could be kept on any lot, which he believed would be an even more interesting scenario in a townhouse development. He said he appreciated the applicant's daughter coming to speak.

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

SHELLY L. RIESTER, SP 97-S-045, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 9205 Dorothy La. on approx. 7,946 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-4((12))11A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 11, 1997; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 2-512, 8-903, and 8-917 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9205 Dorothy Lane, 7,946 square feet, shown on the plat prepared by Louis J. Mataria, dated May 8, 1997, revised by Shelly L. Reister, dated September 5, 1997, and is not transferable to other land.
- 2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
- 3. This approval shall be for the applicant's existing hen. If this specific animal dies or is sold or given away, the animal shall not be replaced.
- 4. The yard used for the hen shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 19, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 130 November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD S. & BRENDA S. McCORMICK, VC 97-P-090, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from rear lot line. Located at 2608 Holly Manor Dr. on approx. 11,407 sq. ft. of land zoned PDH-2. Providence District. Tax Map 49-2((41))(2)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. The applicant's agent, Frederick Vaznaugh, 1565 McNair Street, McLean, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. She said the applicant was requesting a 19.8 foot variance in order to construct a screened porch.

Mr. Vaznaugh said the applicants were seeking a variance in order to enclose a portion of an existing deck 5.2 feet from the rear lot line and added the distance referred to is from the existing stairs with the portion that would be enclosed being 9.1 feet from the lot line. He said the builder had sited the house on the lot in its present location due to a storm drainage easement which created a condition of extreme shallowness in the rear yard. Mr. Vaznaugh said there is a 6 acre floodplain located in the rear of the property; therefore, there would be only a negligible impact, if any, on the neighbors. In closing, he added there are a number of screened and enclosed sun rooms in this neighborhood as well as adjacent neighborhoods.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public

hearing.

Mr. Dively made a motion to grant VC 97-P-090 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

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

RICHARD S. & BRENDA S. McCORMICK, VC 97-P-090, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from rear lot line. Located at 2608 Holly Manor Dr. on approx. 11,407 sq. ft. of land zoned PDH-2. Providence District. Tax Map 49-2((41))(2)26. 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 November 11, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant testified that the lot is shallow and is oddly configured and there is no other place on the lot for the construction.

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

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

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

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

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strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 (screened porch) shown on the plat prepared by Eugene C. Dorn, Land Surveyor, dated October 14, 1994, revised through September 8, 1997, 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 November 19, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 138, November 11, 1997, (Tape 1), Scheduled case of:

9:00 A.M. CARMEN E. GUERRERO, SP 97-M-011, Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 3328 Glenmore Drive on approx. 14,921 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((8)) 5. (DEF. FROM 10/7/97 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. The applicant's agent, Zia Hassan, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. She said the applicant originally requested a special permit in order to convert a single-family dwelling to a child care center for 21 children. The applicant presently lives on the site and is under violation for operating a home child care facility for 12 children without approval of a special permit. Ms. Schilling said since the publication of the July 22, 1997 staff report which contained staff's recommendation of denial, the applicant has amended her request as contained in the Addendum forwarded to the BZA on October 14, 1997. She outlined the changes proposed by the applicant by stating that the number of children has been reduced to 15 and the parking has been redesigned, and the applicant will no longer reside on the property. In closing, Ms. Schilling said staff continued to recommend denial as staff believed that a home child care facility for up to 10 children would be more compatible with the residential area as outlined in the Addendum to the staff report.

Mr. Hassan said there is a only a maximum of ten children at the applicant's day care center and all of those are not at the center at one time. He explained that the applicant was operating under a State license which allowed her to have up to twelve children, and she was unaware of the fact that she needed to obtain a County license also. The applicant has several people on a waiting list who would like their children to attend the facility; therefore, she would like to expand the day care in order to meet the needs of the neighborhood. Mr. Hassan said two of the employees walk to the facility and some of the parents walk their children to the facility and some of the parents are present to support the application. There is

currently no parking on site and the applicant was proposing to add three parking spaces on site in addition to landscaping in order to lessen the impact on the neighbors. Mr. Hassan pointed out that the applicant has a residential permit for two additional parking spaces on Glenmore Drive.

Chairman DiGiulian said the plat contained in the staff report differed from the one distributed just prior to the public hearing and requested a clarification as to the exact location of the parking. Mr. Hassan approached the BZA and said there were two parking spaces on Glenmore Drive and the applicant was proposing to construct three parking spaces on site.

In response to questions from Mr. Ribble and Mr. Hammack with respect to the issue of parking, the applicant, Carmen Guerrero, said the parking permit was issued by the neighborhood and that she parks her vehicle in the driveway.

Mr. McPherson asked if he had understood correctly that the applicant would not live on site. Mr. Hassan said that was correct. Mr. McPherson said a trip generation analysis had been prepared for the 21 children and asked if a new one had been prepared for the 15 children. Staff said a written report was contained in Addendum Number 2 dated October 14, 1997, under the revised Statement of Justification.

Chairman DiGiulian relinquished the Chair to Vice Chairman Ribble who asked staff if they had comments on the trip generation.

Ms. Schilling said staff's concern with parents having to back out onto Glenmore Drive remained even with the three proposed parking spaces and they were also concerned with the probability of stacking.

Mr. Kelley asked if the applicant would retain her residential parking permit if she did not reside on the property. Ms. Schilling said staff was not aware of what the provisions were for the issuance of a residential parking permit.

There were no further questions and Vice Chairman Ribble called for speakers in support of the application.

The following came forward: Priscilla Moore, 3337 Glenmore Drive, and residents of 3302 Culmore Court, 6013 Algar Drive, 5815 Gardens Drive, Falls Church, Virginia. (The speakers were inaudible on the microphone.)

The speakers spoke to the wonderful care that their children receive at the center and said many of them walk to the center and stated that they have not experienced a traffic problem at the center.

Vice Chairman Ribble relinquished the Chair to Chairman DiGiulian.

John Restall, 3324 Glenmore Drive, Falls Church, Virginia, represented ten families who live immediately around the day care center who were in opposition to the request particularly since the applicant will not reside on the site. The speaker was also opposed to the proposed parking lot and the electric sign.

In response to a question from Mr. Kelley about the restricted parking, Mr. Restall explained that one side of the street was restricted and was limited to residential parking permits, one for each resident and one for a guest.

Gary Cook, 6120 Vista Drive, Falls Church, Virginia, an abutting property owner, said he has erected a six foot high fence on the shared lot line in order to lessen the noise and visual impact. He said the applicant currently has ten children, which he believes is adequate.

Panagiotis Katounas, 6115 Vista Drive, Falls Church, Virginia, spoke to the traffic problems that the neighborhood currently experiences.

Mr. McPherson asked staff to speak to the sign proposed by the applicant that will be 12 foot high, 30 x 24 lighted sign. Ms. Schilling said the sign is not permitted by Article 12 of the Zoning Ordinance and staff has addressed that in the Development Conditions.

In rebuttal, Mr. Hassan said the applicant was flexible with respect to the sign and deferred to the applicant for further rebuttal.

Ms. Guerrero said she likes to care for children and would like to increase the number of children who attend the center in order to off set the expense involved which would allow her to continue to provide quality day care for the children.

Mr. McPherson asked how many employees were on site. Ms. Guerrero replied that she currently has one full time, one part time, and herself. If the number of children is increased, the only change will be that the part time employee will become full time with no increase in the number of employees.

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

Mr. Hammack made a motion to deny SP 97-M-011 for the reasons noted in the Resolution.

Mr. McPherson seconded the motion and said he was particularly concerned with the fact that the applicant would not reside on the property, in addition to the transportation issues. He agreed that there was a need to good day care, but he did not believe this proposal would work.

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

CARMEN E. GUERRERO, SP 97-M-011, Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 3328 Glenmore Drive on approx. 14,921 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((8)) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 11, 1997; and

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

1. The applicant is the owner of the land.
2. This type of case is difficult as the Board is sympathetic to the need to provide quality day care and there is no question that the applicant provides this care to the children that she presently has on the site. There are a lot of interesting aspects to this particular application and there are some fairly large institutional uses down the street from the proposed center in terms of the elementary school and high school. But the bottom line is, the applicant cannot provide adequate facilities for dropping off, loading, and unloading the children for the larger number of children that she is requesting. The neighborhood is very congested as far as parking and traffic are concerned, particularly with the through traffic generated by parents taking their children to the neighborhood schools and going to the Culmore shopping center. Staff raised good issues regarding screening and the intensity of the use on the neighborhood in the staff report and those comments are incorporated into these findings. It is very important when children are dropped off or picked up at a day care facility that the parents be able to do that with a relative degree of safety. The applicant could operate a facility at a lesser level if she chose to do so. It is also important to note that the applicant does not intend to reside on the property.

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. 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 November 19, 1997.

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Page 144, November 11, 1997, (Tape 2), Scheduled case of:

9:00 A.M. YANG S. & SUN C. KIM, SP 97-L-031, Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 3435 Franconia Rd. on approx. 0.91 ac. of land zoned R-2. Lee District. Tax Map 82-2((1))48. (MOVED FROM 9/30/97)

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, 7360 McWhorter Place, Suite 200, Annandale, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. She said the applicant was requesting a special permit to convert the existing single family dwelling into a church, which would include construction of a 1,700 square foot addition for use as a sanctuary, pastors quarters within the existing house, and the basement of the house to be used for meeting rooms. The church would contain 84 seats with 23 parking spaces in the rear of the lot. Transitional Screening with a width of 25 feet was proposed along the western property boundary, with landscaping along the rear property boundary. An existing oak tree with a diameter of 38 inches is proposed to be preserved within the front yard. Prior to construction of the sanctuary addition, the applicant proposes to use the existing residence as the pastors residence, and the basement as a sanctuary for a congregation of 25 persons.

Ms. Schilling said in staff's evaluation, all land use, environmental and transportation issues are addressed with adoption of the revised development conditions in the staff report dated November 11, 1997. The revised development conditions include a phrase within the first sentence of Condition Number 11 that was omitted in the staff report. Please note however, that the dwelling unit cannot be used as a pastor's residence and church prior to development of the site, since the pastors residence would occupy more space than the area used as a church, and therefore cannot be deemed an accessory residential use to the primary use as a church. The development conditions address this issue by restricting the use of the site as a church until the site has been developed and a Non-Residential Use Permit has been obtained for a church. Staff recommended approval of SP 97-L-031, subject to the development conditions dated November 11, 1997.

Mr. Mittereder said the applicant was proposing a 1,700 foot sanctuary addition to an existing house with a total square footage of 46,018 square feet on a 0.9 acre site. He said there is more than adequate access from Franconia Road with good sight distance. When the pastor first approached him to discuss the site, he believed this was an appropriate site for a small up-start church and noted that the church has worked closely with staff to address staff's concerns. Mr. Mittereder said the applicant has tried to provide adequate transitional screening to the west and to the north, south and east there are other churches and an existing power line utility easement that separates the property from any adverse impact. In summation, Mr. Mittereder said he believed this was a good location for a church as it is difficult to find appropriate church sites in the County and that he believed there was a need for the church. He respectfully asked that the Board grant the applicant's request.

Mr. Kelley questioned the speaker as to the type of ongoing development adjacent to the subject property. Mr. Mittereder said he was not aware of any pending plans and said he would defer to staff. Ms. Schilling explained that the property is zoned PDH and the site will be developed residentially.

A discussion took place between Mr. McPherson and staff regarding the outlot road. Ms. Schilling explained that the outlot road is existing and accesses a cemetery in back of the church which has been in existence since the Civil War. Mr. Mittereder said the road was grass covered and was very infrequently

used.

Mr. Kelley asked if there were any other churches in the County with 84 seats on less than an acre. Ms. Schilling said she did not have that information readily available, but staff could research the question if the Board wished them to do so. She said staff has surveyed other churches in the County with similar floor area ratios, with one being the Washington Sae Han and said perhaps the applicant's agent might know. Mr. Mittereder said he could not recall the exact acreage.

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

Mr. Pammel made a motion to grant SP 97-L-031 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report with special emphasis on Condition Number 6 which requires that all parking be on site.

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

YANG S. & SUN C. KIM, SP 97-L-031, Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 3435 Franconia Rd. on approx. 0.91 ac. of land zoned R-2. Lee District. Tax Map 82-2((1))48. 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 11, 1997; and

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

1. The applicant is the owner of the land.
2. The Board granted the request with particular emphasis on Condition Number 6 which requires that all parking be on site under Article 11. If the church begins experiencing parking problems, it will need to make adjustments and not begin parking on the street or in the residential community.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 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, 3435 Franconia Road (0.90 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 Archgroup dated September 20, 1997, as revised through October 14, 1997, 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 church shall be 84.
6. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. All parking for church activities shall occur on-site as shown on the Special Permit Plat.
7. Right-of-Way to 56 feet from the future centerline of Franconia Road in accordance with VDOT Project # 0644-029-305 shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.
8. Prior to approval of a grading plan or site plan, a tree save plan for the site shall be submitted for review and implemented as approved by the Urban Forestry Branch of DEM. The plan shall identify, locate and preserve individual mature, large and or specimen trees to the greatest extent possible as determined by the Urban Forestry Branch of DEM. Emphasis shall be given to the mature oak tree located within the northeastern corner of the application property. Subject to the approval of the Urban Forestry Branch/DEM, the applicant shall perform the following measures relating to tree preservation on the property:
 - Perform a pre-construction evaluation of the existing vegetation to determine the condition of the trees designated to be saved.
 - The trees designated to be saved shall be marked on the ground with a filter fabric fence or equivalent demarcation prior to clearing and grading and at all times during construction. Signage affirming "restricted access" shall be provided on the temporary fence highly visible to construction personnel.
 - In addition, where it is determined feasible, adjustments to the proposed grading and location of the access driveway may be modified at the time of final engineering to enhance specific tree preservation.

As a result of final engineering in the event the trees designated for preservation cannot be preserved, equivalent tree save areas or equivalent landscaped areas shall be substituted on the site as determined by DEM.

9. Additional foundation landscaping shall be provided along the north side of the church building to soften the appearance of the building from Franconia Road, subject to the review and approval of the Urban Forestry Branch of DEM.
10. If it is determined by DEM that an underground stormwater detention facility is not permitted on the site, alternate stormwater detention shall be provided off-site, subject to the review and approval of DEM. If it is determined that this cannot be accomplished, the applicant shall seek approval of a special permit amendment to provide an above ground stormwater detention facility on the site.
11. If the pastor's residence is to be located on site, the site shall not be used as a place of worship until construction of the full development of the site, including the addition, is complete as shown on the approved special permit plat and in accordance with these development conditions, and a Non-Residential Use Permit has been issued for the use.
12. Transitional Screening, Landscaping and barriers shall be provided as follows:

North Property Boundary

The barrier requirement shall be waived. Landscaping shall be provided within the northeast portion of the application property generally as shown on the special permit plat, subject to the

review and approval of the Urban Forestry Branch of DEM.

Southern Property Boundary

The barrier requirement shall be waived. Landscaping shall be provided along the southern property boundary generally as shown of the special permit plat, subject to the review and approval of the Urban Forestry Branch of DEM.

Western Property Boundary

Transitional Screening Type 1 shall be provided along the eastern property boundary within a landscape area with a width of 25 feet, in the area shown on the special permit plat, subject to the review and approval of the Urban Forestry Branch of DEM. A 6 foot high solid wood barrier shall be provided in the location shown on the special permit plat, but shall not provided south of the southwestern corner of the parking lot.

- 13. A sign permit shall be obtained for any signs located on the site, in accordance with Article 12, Signs of the Zoning Ordinance.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval* unless the use has been established 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. 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 November 19, 1997. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:50 a.m. and reconvened at 11:00 a.m.

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Page 144, November 11, 1997, (Tape 1), Scheduled case of:

9:30 A.M. SHEEHY INVESTMENTS ONE LIMITED PARTNERSHIP, A 1997-LE-028, Appeal Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has not obtained a Non-Residential Use Permit required to establish the use as authorized by the approval of SEA 86-L-053-1, and therefore is in violation of Sect. 18-701 of the Zoning Ordinance. Located at 6727 Loisdale Rd. on approx. 117,411 sq. ft. of land zoned C-8, SC. Lee District. Tax Map 90-2((1))51A.

William Shoup, Deputy Zoning Administrator, noted for the record that the Board had issued an intent to defer to January 27, 1998, at its November 4th public hearing. Mr. McPherson made a motion to defer to the date suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 145, November 11, 1997, (Tape 1), Action Item:

Consideration to reschedule the public hearing for
Appeal A 1997-PR-022, Nationsbanc Mortgage Corporation
Successor by Merger with Boatmen's National Mortgage

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Mr. Pammel made a motion to defer the appeal to 9:30 a.m. on January 6, 1998, rather than February 24, 1998.

Gregory N. Britto, with the firm of Shapiro and Burson, asked that the Board retain the public hearing date of February 24th to allow Nationsbanc Mortgage Corporation an opportunity to complete the foreclosure proceedings in late December. He added that should Nationsbanc become the successful purchaser at the foreclosure sale, the variance will immediately be refiled.

Mr. McPherson asked how many weeks the foreclosure had to be advertised and Mr. Britto replied once a week for two weeks.

Mr. Shoup said the Board might recall that an attorney representing an adjoining property owner had expressed concern with delaying the appeal for an inordinate length of time and although the Board had agreed to defer the appeal it did question the issue of "standing" on behalf of Nationsbanc. He noted that the interested party was not present.

Mr. Pammel withdrew his motion and suggesting leaving the appeal on February 24, 1998. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 145, November 11, 1997, (Tape 1), Action Item:

South Run Regency Community Recreation Center, SPA 84-S-063-1

Mr. Hammack asked if the item required any action on behalf of the Board. Susan Langdon, Senior Staff Coordinator, said it should have been listed under Information Items rather than Action Items as it did not require any Board action.

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Page 145, November 11, 1997, (Tape 1), Action Item:

Intent to Defer Request
Centreville Presbyterian Church, SP 97-Y-030

Mr. Hammack asked how many cases were currently scheduled to be heard by the Board on January 13, 1998. Susan C. Langdon, Senior Staff Coordinator, replied there were currently seven cases and with the addition of this one would meet the guidelines established by the Board. Mr. Hammack made a motion to defer the SP 97-Y-030 to the date and time suggested by staff. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 145, November 11, 1997, (Tape 1), Action Item:

Out-of-Turn Hearing Request for
Shirley E. Bealor, VC 97-B-109

Susan Langdon, Senior Staff Coordinator, said the application involved a yard variance for enclosing a carport and is currently scheduled for February 3, 1998. Mr. Dively made a motion to deny the request. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 140, November 11, 1997, (Tape 1), Action Item:

Out-of-Turn Hearing Request for
Max Rubin & Macie Rubin, VC 97-D-107

Susan Langdon, Senior Staff Coordinator, said the application involved a yard variance for a covered porch and stairs and is currently scheduled for February 3, 1998. Mr. Hammack made a motion to deny the request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 146, November 11, 1997, (Tape 1), Action Item:

Approval of October 7, 1997 Minutes

Mr. Pammel made a motion to approve the minutes as submitted. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 146, November 11, 1997, (Tape 1), Action Item:

Memorandum Regarding revised Plat
Marcela Shaw, SP 97-Y-026

Mr. Ribble said he made a motion to grant-in-part and the approval required that the applicant submit revised plats and it was his understanding that the applicant had indicated that they no longer wish to pursue the construction of a deck.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the application was approved on August 12, 1997, and at this time the resolution is still pending awaiting the submission of the revised plats. She suggested that the Condition be revised to reflect that the special permit be approved to permit the deck to be 9.8 feet from the side lot line and to require that the plat submitted with the building permit reflect.

Mr. Ribble made a motion to adopt the language as suggested by staff and make it a condition to the special permit.

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Page 146, November 11, 1997, (Tape 1), Action Item:

Request for reconsideration
Cornwell Farm, L.L.C., SP 97-D-040

Susan Langdon, Senior Staff Coordinator, informed the Board that the applicant's agent, Tracey Steele, was present to respond to questions. Chairman DiGiulian asked Ms. Steele if she would like to speak to the request.

Tracey Steele, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., said the applicant appeared before the Board at its November 4th public hearing requesting special permit approval to construct a riding and boarding stable with an accessory riding school and the Board heard approximately 2 ½ hours of testimony. She said it had been her understanding that the Board and neighbors were not so much concerned with the use but with the location of the proposed structures, which she believed could be addressed. Ms. Steele said the major concern with the applicant having to file another special permit is the expense and time involved as the applicant must relocate the existing school no later than February of 1998. She said the applicant appreciated the Board graciously waiving the 12-month time limitation for refiling a new application, but without the granting of the reconsideration the applicant will not be able to proceed with the use.

Mr. Ribble asked the speaker if she had a plan that the Board could review indicating the proposed changes. Ms. Steele said a new plan has not yet been engineered due to the expense. She explained that

the stable, parking, and ridging stable will be relocated away from the neighbors.

Mr. Kelley said he would make a motion to reconsider as he did not see much of a difference between the filing of a new application and a reconsideration. He asked the applicant when they might be ready to proceed. Ms. Steele said they would appreciate a date in December or early January. Mr. Pammel seconded the motion for purposes for discussion. Mr. Hammack said he would like to make certain that the citizens have ample opportunity to review the revisions.

The Chair called for a vote on the motion to grant the reconsideration made by Mr. Kelley and seconded by Mr. Pammel, which carried by a vote of 7-0.

Following a discussion among the Board members regarding the public hearing date, Susan Langdon, Senior Staff Coordinator, suggested a date of January 6, 1998. Mr. Kelley made a motion to schedule the public hearing for January 6, 1998, at 9:30 a.m. as suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 147, November 11, 1997, (Tape 1), Action Item:

Approval of November 4, 1997, Resolutions

Mr. Dively made a motion to approve the Resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 147, November 11, 1997, (Tape 1), BOARD REQUEST:

All Dulles Area Muslim Society, SP 96-D-038

Mr. McPherson asked staff to request copies of all information relating to the All Dulles Area Muslim Society special permit application prior to the Board hearing the application at its January 20th evening meeting. Susan Langdon, Senior Staff Coordinator, agreed to do so.

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Mr. Hammack made a motion that the Board go into Executive Session to discuss personnel matters. Mr. Ribble seconded the motion which carried by a vote of 7-0.

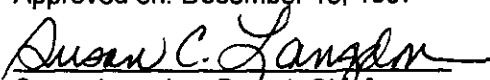
Upon reconvening in the Board Auditorium, Mr. Ribble moved that the members of the board of zoning appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene executive session were heard, discussed, or considered by the board of zoning appeals during the executive session. Mr. Dively 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 11:42 A.M.

Minutes by: Betsy S. Hurtt

Approved on: December 16, 1997


Susan Langdon, Branch Chief
Special Permit and Variance Branch


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 18, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble.

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Chairman DiGiulian called the meeting to order at 8:10 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 149, November 18, 1997, (Tape 1), Action Item:

Request for Reconsideration
Yang S. & Sun C. Kim, SP 97-L-031

Mr. Ribble remarked that it was stated in the letter received by the Board that the petition was not received on time due to a fax machine not working and stated that it was not a valid reason for reconsideration.

Mr. Ribble made a motion to deny the Request for Reconsideration. The motion was seconded by Mr. Kelley which carried by a vote of 7-0.

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Page 149, November 18, 1997, (Tape 1), Action Item:

Request for Reconsideration
Joan K. and Harrison G. Wehner, Jr., VC 97-D-027

Chairman DiGiulian stated that a motion was not made. Therefore, the reconsideration was denied. Mr. Kelley stated that had a motion been made, he would have voted against it.

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Page 149, November 18, 1997, (Tape 1), Action Item:

Approval of November 11, 1997, Resolutions

Mr. Ribble moved to approve the Resolutions. The motion was seconded by Mr. McPherson which carried by a vote of 7-0.

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Page 149, November 18, 1997, (Tape 1), Scheduled case of:

8:00 P.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030, Appl. under Sect(s). 3-C03 of the Zoning Ordinance for church and related facilities and nursery school with an enrollment of 100 or less students daily. Located at 15113 Lee Hwy. on approx. 10.47 ac. of land zoned R-C, WS. Sully District. Tax Map 64-2((3))21; 64-2((2))19, 20, 21. (DEF. FROM 9/16/97 TO ALLOW APP. TO REVISE APPLICATION)

Susan Langdon, Staff Coordinator, stated that the Board approved an Intent to Defer the case to January 13, 1998, at 9:00 a.m.

Mr. Ribble moved to defer the case to January 13, 1998. The motion was seconded by Mr. Hammack which carried by a vote of 7-0.

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Page 149, November 18, 1997, (Tape 1), Scheduled case of:

8:00 P.M. MARY NORTHRUP, WILLIAM & JANET BURROW, LYNWOOD & RUTH TART, GEORGE &

MARGARET QUADRINO, Appeal A 1997-MA-017, appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a Residential Treatment Center can be established at Dominion Hospital without Board of Supervisors' approval of an amendment to Special Exception SE 90-M-005. Located at 2960 Sleepy Hollow Rd. on approx. 40,660 sq. ft. of land zoned R-3, HC, SC. Mason District. Tax Map 51-3((1))9A. (DEF. FROM 9/23/97)

Chairman DiGiulian stated that the speaker's list contained approximately 38 people. Mr. Hammack moved that the Board limit individuals to two minutes and organizations to five minutes. The motion was seconded by Mr. Ribble which carried by a vote of 7-0.

Jane Gwinn, Zoning Administrator, stated that the case had been previously deferred by the Board so that a determination could be made in reference to outstanding questions regarding whether the hospital was in compliance with Condition 1 of the Special Exception (SE) which limits the approval to the operator only. Numerous documents were received from the appellant's counsel with information being received late the day before. The written determination was not finalized; however, Ms. Gwinn stated that she would have something finalized by the end of the week. She also stated that based on the information she had received and after coordinating with the County Attorney's Office, she did not find a violation of Condition 1.

Mr. Dively wanted to know how Ms. Gwinn arrived at the determination that Condition 1 was not being violated, which Ms. Gwinn replied that she based her determination on the various documentation that she had reviewed.

John McBride, attorney for the appellants, stated that he represented the appellants who live in close proximity to Dominion Hospital and Dominion Center. He stated that the issue was whether the operator of Dominion Hospital and Dominion Center had to submit to the SE process to attain approval to operate a new use and new operator of the uses for the property. The appellants contend that an SE amendment was required under the Zoning Ordinance and Condition 1. The appellants felt that a use could not be approved by SE unless it was identified in the SE application or the SE plat. The Zoning Administrator's opinion differed from that of the appellants.

Mr. McBride stated that there were four reasons why the appellants felt that Condition 1 was being violated. The LLC is a different entity than Virginia Psychiatric Company. Virginia Psychiatric Company is a minority member of the Columbia Arlington Health Care System, LLC. The decisions were not made by them. The LLC Board makes the decisions. The LLC is the tenant in the lease and they exercise control of the property. The appellants felt that Dominion is trying to hide something in that it took six months to produce documentation. The appellants felt that Dominion had spent a lot of time and resources trying to avoid applying for an SE amendment.

Mr. McBride stated that the quality of care at Dominion Hospital and Center was not the issue or dispute in the case, neither was the need or lack of need for an adolescent residential treatment center (RTC). The appellants felt that the issue was that Dominion should have to submit to the SE process which provides public, staff, and HCAB review of a medical care facility. He stated that the residents and appellants are concerned about traffic, public safety, and the appropriateness of an adolescent RTC on the site. The site is 2.5 acres and the Zoning Ordinance normally requires five acres. The appeal was filed to require the operator to submit to the SE process to ensure that the proposed uses were appropriate for the site, the neighborhood, and that the impacts could be mitigated through SE conditions.

According to the appellant, none of the issues dealing with the RTC were addressed in the SE application or in the HCAB approval subsequent to the 1990 SE. The appellant felt that the reason it was not an issue was because it was not requested.

The concern of the appellants was the broadness of the Zoning Administrator's ruling which would make any psychological treatment a "by right" use under the SE, therefore not qualifying or requiring a Category 3 SE amendment. Mr. McBride stated that under this ruling, the facility could be converted to other programs.

He stated that the community had no certainty as to what type of programs would be added. The appeal did not include what uses were allowed by right in a zoning district. It concerned what uses were specifically approved in an SE application which is a site-specific review of a use of a property which would insure that adverse effects are mitigated. The appellants; the Planning Commissioner, Mr. Strickland, who recommended approval of the SE; the Board member who moved approval of the 1990 SE; and, the application and analysis done by staff indicated that it was limited.

Mr. McBride stated that the issue in the appeal was whether there was a new and different use of the property which would require an SE amendment and whether the operator remains the same or whether there is a new operator or multiple operators on the site. The appellants felt that an SE was required and that the Zoning Administrator could not amend the Ordinance and the requirements for SE approvals as has been done.

Mary Northrup, Ichabod Place, Falls Church, Virginia, stated that she was taking exception to the staff report submitted by the Zoning Administrator. She stated that according to the staff report, an inquiry was started because of an inquiry from the State Office of Licensure about the RTC. She stated that when the community heard that the hospital was going to open an RTC, there was a meeting with Supervisor Gross and the Zoning Administrator. She stated that they only had one week before Dominion was going to obtain their license and have the grand opening. She stated that the day after the meeting, Supervisor Gross called and stated that the Zoning Administrator had informed the State Office of Licensure and the hospital that there were zoning problems with the RTC and that they could not go forward. She stated that the information was not included in the record.

Ms. Northrup stated to the Board that she later received a call from the Zoning Administrator who stated that there were no facts and that because there were no facts, that she had to make a judgment based on instinct. Ms. Northrup stated that the Zoning Administrator originally ruled one way, notified the hospital and state authorities, and then because of time pressures, reversed her position.

Ms. Northrup asked the Board to consider what was written at the bottom of Page 5 of the staff report where it stated that the land was developed as a psychiatric hospital. She stated that the Zoning Administrator contends that Dominion is a broad psychiatric facility. Ms. Northrup felt that there was a contradiction. She asked that that be placed in the record.

Sean Murphy, attorney for Dominion Hospital, asked that a copy of his remarks and the remarks of Barbara Hekimian, President and Chief Executive Officer of Dominion Hospital, be filed for the record.

He stated that the sole issue before the Board was whether the Zoning Administrator correctly determined that the establishment of an RTC at Dominion was in violation of its SE. The Zoning Administrator determined that it was not in violation because it was a form of treatment that Dominion had engaged in for adolescent patients since it was established in 1970. He stated that the only change that was made, was the length of stay that patients were allowed in the hospital. He stated there were cases where it took longer to stabilize a patient, therefore, prolonging the stay. Dominion was granted a special use permit in 1970, which allowed them to operate as a psychiatric facility. There were certain limitations, no committed patients, no drug patients, violent patients, and no outpatients. There were no limitations on length of stay or type of service provided. It was not changed in 1990, by the special exception process. The nursing home was phased out to add an additional 30 beds. The 100-bed psychiatric hospital approval in 1970, was still intact. The exception did not deal with the 100-bed unit. They could still continue to treat psychiatric patients as always on an in-patient basis.

Chairman DiGiulian asked Mr. Murphy why, if they were allowed to have the RTC since they got the first SE, did they apply for a license in May of this year. Mr. Murphy stated that Dominion was having adolescents in for extended periods of time and that there were educational regulations that applied when adolescents were in for extended periods. Mr. Murphy stated that if young people were in the facility for extended periods of time, a license had to be obtained. They were allowed to have the RTC before, but the educational regulations required Dominion to have a license.

Mr. Kelley asked Mr. Murphy if the change of permittee was an issue, in which Mr. Murphy replied that it

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was not. Mr. Kelley stated that he thought that it was a primary issue and that the RTC was a secondary issue. Mr. Murphy stated that he viewed the issues as separate and independent.

John Steg, Northern Virginia, child adolescent psychiatrist, stated that he had been in practice for the last 25 years. He had been a teacher at Georgetown University Hospital and on staff at Dominion Hospital. Over the years he had watched the average stay in the hospital for adolescents decrease from 2-6 months to 1-2 weeks and as little as three days. He went on to state that it has caused a problem with repeat discharges and having to find other funding sources to give a longer length of stay.

Patricia Christiansen, 2803 Flag Baker Drive, Falls Church, Virginia, stated that she has been a registered nurse for 23 years with a Masters Degree in nursing. She spoke to the fact that adolescents had been treated in Dominion from her first contact with the facility. She vouched for the quality of service provided by Dominion Hospital.

Mr. Dively requested that the speakers only address the issues related to the Zoning Administrator's decision and whether or not it was legally justified. He stated that it would be more helpful if they would address those issues rather than the issues that were appropriate to an SE or special permit. Mr. Kelley stated that there was no dispute as to whether the center provided good service or whether the service was needed.

Jean Reynolds, director of adult services at Dominion Hospital, stated that she has worked at the hospital since 1973, 23 years. She spoke on the length of time that adolescents were allowed to stay at the hospital and spoke of the changes made. The length of time was now shorter and patients were being sent to other facilities to continue the treatments needed. She stated that the RTC allowed for the treatment to be closer to the patient's home. She stated that the community need not be concerned with safety, that she has worked at Dominion for 23 years and considers it to be a safe place.

Steve Harner, licensed clinical social worker, 100 N. Washington Street, Falls Church, Virginia, stated the RTC was not a new service to Dominion. He stated that the children posed no danger or threat to the community and added that the real danger was the public's need to be educated in regard to mental health.

Tresa Talierco, licensed clinical social worker, said she has been in the field and worked for Dominion for the past 23 years. She spoke on the need for adolescent patients to have a longer length of stay at the hospital in order to build coping skills. She also stated that she lived in the vicinity and added that she had no fear in being a neighbor and no fear in working at Dominion each day.

Sally Draper, director of youth services at Dominion Hospital, stated that the RTC treats patients that are recovering and that the only way in which that could happen is with the extended care. If this care was not offered, more children would relapse and end up being hospitalized repeatedly. The extended care enables children to get well and stay well.

Mr. Dively reiterated that discussions about the need for mental health was not going to help the Board to make its decision. He asked that the speakers stay within the confines of the very narrow issue which was whether or not the use is contrary to the SE use. He repeated that the larger issue was not before the Board.

Gary Spivack, clinical director of the child and adolescent program at Dominion Hospital, expressed that there had been no essential change in the treatment from the early 1990s to now. He stated that what had changed was the method of payment. He stated that there was zero difference between what was done before as opposed to now in regard to treatment.

Yolana Hansen, director of clinical services at Dominion Hospital, stated that Stephanie McNeil's letter had already been submitted to the Board.

Lawrence Brain, medical director of the RTC program, stated that he had already submitted a statement and that if the Board had any questions, he would be happy to answer them. There were no questions. Mr. Murphy expressed to the Board that he would ask the speakers to address the issue of what is before

the Board which included the issue of whether or not an RTC was a new use. He stated that he would ask those that were not going to address that issue to submit their statements to the Board.

Richard Roth, psychiatrist at Dominion Hospital, stated that he has been a staff member at Dominion since 1977, and that the types of treatment at the hospital had remained the same, the only difference was the length of stay.

Mr. Dively referenced Supervisor Davis' statement which indicated that the SE was only to involve juvenile committed patients and to conduct outpatient day treatment. Mr. Roth stated that Dominion has very few committed patients and stated that he wasn't sure what outpatient day treatment referred to. Mr. Dively wanted an explanation of day treatment and residential treatment. Mr. Roth explained that day patient meant that the patient was treated in the hospital and returned home for the night and that residential treatment meant that the patient stayed 24 hours a day in the hospital for about 6 to 12 months and was provided certain services.

David Frenkel, psychiatrist, stated that he lives in the neighborhood with his children and had been on staff at Dominion for the past 16 years. He stated that there is no difference between the RTC and the in-patient center. Dr. Frenkel stated that the treatment was the same, the only difference being the amount of time that the insurance companies felt that a patient should stay in the hospital.

William Whitacre, homeowner in the Seven Oaks One development and a member of the association's board and also the community representative on the Columbia Dominion Board of Trustees, stated that he was unaware of the community's concern over the issue of the RTC program. He was, on the other hand, aware of the concerns of the local health advisory board and community residents over the procedures followed by Ms. Gwinn to reach her decision to allow Dominion to operate an RTC. He stated that he understood that the only issue was the procedure and not the RTC program. He stated that he believed Ms. Gwinn's decision was correct.

Karen Braun spoke on behalf of Seven Corners Professional Park which is the medical complex adjacent to Dominion Hospital. She stated that she had already submitted her statement to the Board but wanted to add that a hearing should be held before the Board of Supervisors to address the issue of the RTC.

Gary Litovitz, medical director at Dominion, stated that Dominion Hospital used to operate an accredited school but was dropped when the length of stay for adolescents became shorter. When the unit opened to allow children to stay longer, the accredited school services were reinstated. He stated that that was one of the major reasons for applying for licensure for the RTC program which was different from in-patients. Mr. Hammack asked when the RTC program was dropped and Mr. Litovitz replied that it was abandoned.

Charlene Pennington, an employee of Dominion for 18 years, spoke to the fact that the type of services provided by Dominion has remained the same. The only change was in the length of stay.

John Meyer, 6231 Kilmer Court, Falls Church, Virginia, president of Ravenwood Park Association, stated that Ms. Gwinn's ruling presented a number of problems. He stated that the RTC was not a hospital treatment unit. He stated that it was not established as an approved SE land use by the BOS, but was established as a separate medical care facility. He stated that it was never proposed or subjected to a public review process intended for Category 3 SE land uses. He stated that the RTC would have an impact on the community because they are dealing with difficult children from difficult families. He stated that he felt that Jane Gwinn made a political decision, not a zoning decision. He respectfully asked the Board to reverse the decision.

Ray Friday, 3126 Valley Lane, Falls Church, Virginia; Bob Daugherty, 6425 Ichabod Place, Falls Church, Virginia; Marcella Marcey, 3300 Juniper Way, Falls Church, Virginia; Arlene Whitten, 3015 Aspen Lane,

Falls Church, Virginia; Elsa Angel (read Jane Harvey's statement into the record); Christine Trapnell, 3416 Mansfield Road, Falls Church, Virginia; James Chapman, 3023 Castle Road, Falls Church, Virginia; Nancy Deal (read Shirley Fegan's statement into the record); Henry Strickland; 3035 Holmes Run Road, Falls Church, Virginia; Congressman Davis (statement read by another party); Anne Pendleton, 3028 Knoll Drive,

Falls Church; Edward Ruggiero, 3211 Patrick Henry Drive, Falls Church, Virginia; Elsa Angell, 6420 Ichabod Place, Falls Church, Virginia; George Fitchko, 3027 Hazelton Street, Falls Church, Virginia (statement read by another party); Ken Rapuano, 3202 Juniper Lane, Falls Church, Virginia, statements were read into the record. Copies are contained in the file.

They all spoke in support of the appeal basically stating that the patients treated at the RTC were difficult patients who may be a threat to the community. They were concerned about patients escaping into the community. It was also the general consensus of those testifying that the ruling would set a bad precedent, that it avoids the intended hearing and review processes for medical care facilities intended by the BOS. It makes broad assumptions as to what was originally intended. It was also stated that the ruling leaves no incentive for Dominion to address the concerns of the community. This zoned restricted land and any expansions into the RTC line of business require an SE amendment. If the Zoning Administrator's decision is upheld, Dominion would have approval to expand their psychiatric operations without County review. Anne Pendleton stated that she wanted to clarify that the Dominion Hospital Advisory Board represented the seven neighborhoods or civic associations which surround it. She stated that the board members are appointed by their civic associations. She stated that Mr. Whitacre is a member of the Dominion Hospital board appointed by Barbara Hekimian and speaks only for Dominion Hospital and is not a community representative.

Mark Hayes, 3155 Juniper Lane, Falls Church, Virginia, stated that the hearing had nothing to do with mental health, but had to do with money. He stated that the hospital was trying to maximize their use of the facility at the expense of the community. He stated that testimony was given stating that an adolescent center had been operating since 1970, but he pointed out that the Virginia Psychiatric Company was not founded until the late 1980s. He stated that he was under the impression that the operator of the facility would be revealed but was informed by Ms. Gwinn two months later, that they were still waiting for documentation. He asked the Board to decide whether the LLC was operating as a hospital or whether it was operating as Virginia Psychiatric. He pointed out that there was a lot of testimony from physicians, he asked the Board to have them show their Virginia Psychiatric paychecks to determine who the real operators were. He stated that the Board should consider the fact that Arlington Hospital has a 50 percent vote. He expressed that he felt that the LLC was operating the hospital and asked that the Board seriously consider who is operating the hospital.

Delegate Bob Hull stated that he submitted to the Board a copy of his statement. He stated that the key to the case was whether operation of the RTC was a new use, that it was a land use question. He stated that the use of Dominion Hospital for an RTC was a separate and distinct use of the facility not envisioned by the BOS in 1990. He stated that the Commonwealth of Virginia considers RTC facilities to be separate uses for which separate licenses are needed which requires separate procedures. He asked the Board to uphold the appeal of the citizens and to overturn the determination made by the Zoning Administrator.

Barbara Hekimian, President and CEO of Dominion Hospital, stated that the services provided by Dominion are the same, that they had not expanded.

Ms. Gwinn, Zoning Administrator, objected strongly to the arguments regarding the operator. She stated that the issue before the Board was the decision made in May of 1997, which addressed whether Dominion Hospital could operate an RTC under its existing SE. She stated that she did not address in writing the issue of compliance with Condition #1 and the operator. She stated that what was in front of the BZA was what was set forth in her decision. The 1990 SE did not address the psychiatric facility. An RTC is consistent with a psychiatric facility. There's nothing in the 1990 SE that limits the length of stay or severity of mental illness or the type of psychiatric care that could be provided. Based on that, her position was that the RTC and the knowledge that it is very commonly found in psychiatric hospitals in Virginia, that it is within the scope of the approval for a psychiatric facility.

Mr. Hammack stated that before him he had the basis and grounds for appeal, date stamped June 9, which stated that the establishment of an RTC required approval by the BOS of an SEA and the determination by the Zoning Administrator that an adolescent residential treatment center could be established by Columbia Arlington Health Care System, LLC was not in conformance with Development Condition #1 which limits the SE approval to only one operator, Dominion Hospital, it not transferable to another operator without

approval of an SEA by the BOS. He wanted to know if she was asking the BZA to defer the decision until she could review documents and asked what the County's position was on the issue. He stated that he had a number of documents showing LLC as being the operator rather than Dominion. Mr. Hammack stated that the County was supposed to act within a certain period of time and that she had not addressed the issue.

Karen Harwood from the County Attorney's Office, stated that the matters quoted by Mr. Hammack from the appellant's statement did not necessarily mean that Ms. Gwinn made the statements. She stated that there was nothing in Ms. Gwinn's decision dated May 8, 1987, saying anything about Columbia HCA. Ms. Gwinn did not rule on the operator in Condition #1 and the matter was not before the BZA in the appeal. Mr. Hammack asked why was it not before the BZA and wanted to know if Ms. Gwinn was required to act within a certain timeframe under State Code. Ms. Harwood stated that the BZA was required to act within a certain period of time but that the State Code did not mandate that the Zoning Administrator render an opinion within a certain length of time.

Mr. Hammack asked Ms. Gwinn if she were asking for additional time to review the case or did the County want to rest on the decision made. Ms. Harwood explained that it was her understanding that the appellants wanted the BZA to make a decision at this hearing on the issue of the RTC. She stated that if it was the BZA's decision to defer further, the BZA would have to get the appellant's concurrence to do so. Mr. Dively stated that he had no interest in deferring the case any further.

Mr. Dively asked if psychiatric day treatment for adolescents come under psychiatric treatment facilities. Ms. Gwinn answered that it would not, based on the previous operating conditions. Mr. Dively asked if Ms. Gwinn did a factual determination on what the uses were prior to 1990 to in which Ms. Gwinn replied that she did try to establish what had been the history of psychiatric treatment at Dominion Hospital from 1970 forward.

Mr. McBride in his rebuttal asked why there was specific special exception approval needed for Alzheimers and head trauma programs and not for the RTC recognizing that an RTC was a separate distinct program and facility in the health care field and that it was in existence in 1990. He also asked why Health Care Advisory Board reviews were needed for Alzheimers, head trauma and for the conversion of nursing beds to psychiatric hospital beds when it is not needed for the RTC. He stated that state licensure is not a distinguishing factor. He stated that to be consistent, the Zoning Administrator should have ruled that the RTC did need an SE amendment. He stated that he felt that an amendment was required under the Zoning Ordinance and that Ms. Gwinn's error was not in ruling on Condition #1.

Mr. Hammack stated that he was of the opinion that the application should go back to the BOS and that points raised by Mr. McBride were valid points. He moved to overrule the determination of the Zoning Administrator on both issues. He stated that the SE granted in 1990, by the BOS was granted only to the proposed operator, HCA Dominion Hospital, and that it was not transferable without approval of the SE amendment by the BOS. The documents furnished to the BZA indicated that Virginia Psychiatric Company was the landlord and Columbia Arlington Healthcare was deemed the tenant. In the agreement, Para. 4.4 defines Columbia Arlington Healthcare System LLC as the tenant. Under the Code of Virginia, limited liability companies were determined to be separate entities. The original grant to HCA in 1990 had changed. It had reorganized itself into a limited liability company in which the original wholly owned subsidiary, Virginia Psychiatric, is a minority member. Given the changes, the hospital is being operated and managed by the LLC. He stated that for purposes of the application of Development Condition #1, it was a transfer which required approval of an SE amendment by the BOS.

Mr. Hammack stated that with respect to the RTC use, it was an expansion which was different from the existing uses and those uses which were approved in 1990. He stated that Condition 8 was put in there to give residents an opportunity to address issues raised if the programs were changed. He moved to reverse the Zoning Administrator's determination.

Mr. McPherson asked Mr. Hammack if he would consider separating the two issues into separate votes. He stated that it would do the Board well if they voted separately and would consider them as two separate motions in order to further define the issues before the BZA and the parties involved. Chairman DiGiulian

agreed with Mr. McPherson stating that if Ms. Gwinn had not made a determination on Condition #1, then the Board would be able to find that they needed to comply, but that he did not want to say that they were overruling the Zoning Administrator's determination if she had not made it yet. Mr. Hammack stated that he had no objection.

Mr. Hammack withdrew his original motion and moved that the Board reverse the Zoning Administrator's determination with respect to the residential treatment facility. The motion was seconded by Mr. Dively and Mr. Ribble.

Mr. Pammel stated that it was clear from the testimony that the RTC was a more intensive activity than it currently exists. He stated that Condition #10 states that "there shall be no more than 10 committed patients..." and he cannot see how that condition could be met.

Mr. Kelley stated that he agreed with the motion and that he planned to vote for it. He stated that having the statements of Commissioner Strickland, Congressman Davis, and Ms. Trapnell gave him a sense of the legislative history and that Delegate Hull pretty much summed up what he was about to remark.

The motion carried by a vote of 7-0.

Mr. Hammack moved to reverse the Zoning Administrator's decision based on the applicant's failure to comply. Mr. Ribble stated that the Zoning Administrator had not made a determination. Chairman DiGiulian stated that the BZA could find that they had to comply with Condition #1 and that should satisfy the appeal. Mr. Hammack stated that the BZA should reserve ruling on that issue until the determination by the Zoning Administrator was made.

Mr. McBride stated that the basis of the appeal was that the Zoning Administrator did not make that determination prior to ruling that an RTC could be established. He stated that the fact that Ms. Gwinn did not reach that determination, was grounds for appeal and that the BZA could vote on that regardless of the merits of what the findings would have been.

Mr. Hammack revised the motion to state that failure to address the issue raised with Development Condition #1, was grounds for the reversal of the Zoning Administrator's decision. Mr. McPherson stated that the issue was a narrow procedural issue. He expressed concern about the information contained in the documentation submitted as part of the overall appeal. Mr. McPherson stated that he did not think that the issue was before them. He stated that it was premature and that the applicant had appropriately raised the issue, but it was not an issue that the BZA had to decide right then.

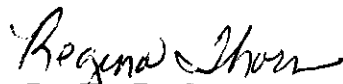
Mr. Hammack stated that there was a lot of compelling documentation before the BZA on how the hospital was operated and managed. He stated that he did not have an objection to withdrawing his motion and deferring action until after the Zoning Administrator's determination which would be made in a week. Mr. McPherson stated that the BZA should not put the issue as an appendage to the appeal, to let it run its normal course. Mr. Hammack withdrew his motion. Mr. Pammel seconded.

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As there was no other business to come before the Board, the meeting was adjourned at 10:32 p.m.

Minutes by: Denise Snyder, Deputy Clerk

Approved on: January 20, 1998



Regina Thorn, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 2, 1997. The following Board Members were present: Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble. John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:15 a.m.

Mr. Hammack read into the record the resolution commending Betsy Hurtt for 12 years of service with the Board of Zoning Appeals.

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Page 151, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. TRACY SAVAGE, VC 97-P-092, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.2 ft. from front lot line and stoop 28.2 ft. from front lot line. Located at 8724 Wolfrap Rd. on approx. 22,804 sq. ft. of land zoned R-1, HC. Providence District. Tax Map 39-1((4))4.

Vice Chairman Ribble stated that it was his understanding that the notices were not in order for the case. Susan Langdon, Chief, Special Permit and Variance Branch, indicated that he was correct, that the applicant did not do the notices. Ms. Langdon suggested a deferral date of January 27, 1997, at 9:00 a.m.

Mr. McPherson moved that the case be deferred to January 27, 1997, at 9:00 a.m. The motion was seconded by Mr. Pammel which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 157, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. ANNA & CLAUDE CHAMPAGNE, SP 97-V-050, 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 6.0 ft. from side lot line and 7.9 ft. from rear lot line, and an existing balcony to remain 7.3 ft. from rear lot line. Located at 2221 Windsor Rd. on approx. 14,086 sq. ft. of land zoned R-4. Mount Vernon District. Tax Map 83-3((14))(22)515.

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. Gabriel Nichols, agent for the applicant, 319 East Monroe Avenue, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a special permit for error in building permit to allow an existing dwelling to remain 6 feet from the side lot line and 7.9 feet from the rear lot line. Therefore, the error within the side yard constitutes 4 feet and the rear yard 17.1 feet. The applicant also requested a special permit for error in building location to allow an existing balcony to remain 7.3 feet from the rear lot line. The error for this structure constitutes 5.7 feet.

Gabriel Nichols, agent for the applicant, stated that the applicant purchased his home in August 1997. He discovered while trying to get a building permit that there were several things not in compliance with the zoning codes of Fairfax County. He was instructed to apply for an error in building location permit. Mr. Nichols stated that everything in place on the property was put there over 20-30 years ago by someone other than the current owners. The new additions are in compliance. The applicant asked that the Board support the application so that the house could remain as is.

There were no speakers either in support or in opposition of the application.

Mr. Nichols informed the Board that he submitted a signed petition to staff for the record which supported the application.

Mr. Hammack made a motion to grant SP 97-V-050 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANNA & CLAUDE CHAMPAGNE, SP 97-V-050, 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 6.0 ft. from side lot line and 7.9 ft. from rear lot line, and an existing balcony to remain 7.3 ft. from rear lot line. Located at 2221 Windsor Rd. on approx. 14,086 sq. ft. of land zoned R-4. Mount Vernon District. Tax Map 83-3((14))(22)515. 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 2, 1997; 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 construction that requires the special permit to be granted was done by the previous owner quite some years ago and is not the fault of the existing owner.

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 a single family dwelling and balcony shown on the plat prepared by Kenneth W. White, dated September 4, 1997, as revised through September 16, 1997, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 157 December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM B. BERN, VC 97-P-096, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 5.0 ft. from side lot line and 16.2 ft. from rear lot line and permit second story addition. Located at 7715 Idylwood Rd. on approx. 20,306 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4((1))230.

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. William B. Bern, 7715 Idlewood Road, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permits and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit an existing garage to remain 5 feet from the side lot line and 16.2 feet from the rear lot line, and to permit a second story addition. A variance of 7 feet was requested to the side yard requirement and a variance of 3.3 feet was requested to the rear yard requirement.

Mr. Bern, the applicant, stated that when the house was constructed and purchased in 1988, there was no indication that there was a violation in setback. His property is located on an oddly configured shallow lot. The distance between his garage and the house is approximately 45 feet and in no way overshadows the neighbors home. He stated that a strict application of the Ordinance would cause undue hardship. He is unable to park his cars in his garage and stated that several homeowners in his neighborhood have already added on two story additions. The proposed construction would be consistent with similar additions and new home constructions in the zoning area. He asked that the Board respectfully approve his application.

There were no speakers in support of the application.

Morgan Brook Devlan, owner of the property (Lot 231) adjacent to the applicant, spoke in opposition to the application stating that she was told that the garage would be torn down and it was not. Instead, the garage was renovated with a bathroom and bedroom and a sliding glass door was added. The owners that she purchased her home from did not disclose to the County how close the structures were to the property lines. Ms. Devlan stated that she was told at the time she purchased her home that there would be no development behind her property. Since then, there had been new development and several new homes built. Mr. Bern's addition is going to have a detrimental effect on her property because she is going to have a large two-story structure looming over her property therefore destroying her privacy and impacting on the value of her property. She asked that the Board deny the application.

Mr. Bern, in rebuttal, stated that all the development in the area overshadow Ms. Devlan's yard. The shed that Ms. Devlan constructed next to his garage exceeds 250 square feet and exceeds 15 feet in height which requires a permit. Ms. Devlan asked several times for Mr. Bern to postpone his application until she

sold her house, but he felt that he could not do that. Mr. Bern stated that he had plats which show the distance of her shed from the lot lines.

Mr. Pammel made a motion to deny VC 97-P-096. Mr. Kelley asked Mr. Pammel if he would prefer to grant the application in part leaving the garage. Mr. Pammel then made a motion to grant-in-part VC 97-P-096 for the reasons noted in the resolution.

NOTE: The Board only allowed the existing structure to remain and denied the second story addition. The Board also asked that staff convey to the applicant that he needed to submit revised plats which delete the note referencing the second story addition. The Board policy is that all revised plats be submitted within 30 days of the hearing date.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM B. BERN, VC 97-P-096, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 5.0 ft. from side lot line and 16.2 ft. from rear lot line and permit second story addition. **(SECOND STORY ADDITION NOT GRANTED)** Located at 7715 Idylwood Rd. on approx. 20,306 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4((1))230. 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 2, 1997; and

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

1. The lot has an unusual configuration.
2. There are events that have created the situation where the garage is within 5 feet of the adjoining property line.
3. Nothing can be done at this point with the existing structure. It is an accessory structure.
4. There is a sliding glass door at the rear of the structure which is unusual for a garage. It may indicate that the structure is being used as a residential unit in some form.
5. The structure is too close to the adjoining property.
6. The applicant has not presented testimony that indicates that he complies with the nine prescribed standards for the granting of a variance for the second story 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

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regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 accessory structure (garage) shown on the plat prepared by Joseph Monaco dated _____ Submitted with this application and is not transferable to other land.
2. The accessory structure shall not be used as a dwelling unit or for living space.

Pursuant to Sect. 18-407 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. Chairman DiGiulian was absent from the meeting.

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

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Page 60, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SAM A. LEE, SP 97-L-035, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6352 Rockshire Street on approx. 2,712 sq. ft of land zoned R-8. Lee District. Tax Map 91-3 ((10)) 28. (DEF. FROM 10/14/97)

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. Sam A. Lee, 6352 Rockshire Street, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit to allow a modification to the limitation to the keeping of animals to permit three dogs to remain on his property which is less than 12,500 feet.

Mr. Lee, the applicant, stated that he had been robbed twice and it was recommended that he use dogs to protect his property. The dogs have done a good job in protecting his property although the dogs are not attack dogs. The only problem with the dogs is that the dogs tend to howl at times. He asked that the Board grant his application.

Mr. McPherson asked Mr. Lee how long he had been living at his current address. Mr. Lee replied 10 years.

Mr. McPherson made a motion to grant SP 97-L-035 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SAM A. LEE, SP 97-L-035, Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6352 Rockshire Street on approx. 2,712 sq. ft of land zoned R-8. Lee District. Tax Map 91-3 ((10)) 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 December 2 1997; and

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

1. The animals are relatively large.
2. The applicant has indicated straightforwardly that the dogs occasionally howl like wolves. The applicant needs to maintain as much control of the dogs as possible.
3. The applicant has met the necessary standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 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, 6352 Rockshire Street, 2,712 square feet, shown on the plat submitted by Sam A. Lee, dated July 29, 1997, and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing three dogs. If any of these specific animals die or are sold or given away, the animals shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used for the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.

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. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 103, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SALVADOR R. PEREZ, SP 97-L-032, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.5 ft. from side lot line. Located at 7304 Charlotte St. on approx. 10,720 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3((2))(35)17. (DEF. FROM 10/7/97 FOR NOTICES)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marvin Burgos, Agent/Interpreter, 7304 Charlotte Street, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirement based on an error in building location to permit a room addition, which is an enclosure to an existing carport, to remain 10.5 feet from the side lot line.

Mr. Burgos, agent, stated that the applicant was not aware that he needed a permit to build. The applicant, through Mr. Burgos, expressed that the neighboring properties have enclosed garages which they have turned into extra rooms. Mr. Burgos stated that when the applicant bought the house, there was a storage room already built which is 10.5 feet from the line. The minimum yard requirement is 12 feet. The applicant merely continued building on to what was there, enclosing the garage.

Mr. Kelley stated that staff indicated that Mr. Perez already applied for a building permit and was denied in 1995. Mr. Burgos stated that the applicant informed him that he had a contractor represent him on that matter but the contractor never followed through and Mr. Perez never filled out the paperwork because it was too complicated. Mr. Burgos stated that it was the first time that he had seen the application for the building permit done in 1995.

Mr. McPherson asked Mr. Perez when he started construction. Mr. Burgos answered that Mr. Perez started three months ago, that he was doing the construction on his own. Mr. Kelley asked how long had Mr. Perez owned his house, to which Mr. Perez replied, two years.

Mr. Hammack wanted to know who represented Mr. Perez when he filled out the application in 1995. Mr. Burgos replied that a friend of Mr. Perez was representing him, but that they had a problem between them and the gentleman refused to help him further.

Mr. Dively asked if the signature on the 1995, application was Mr. Perez's signature. Mr. Perez replied that it was.

Mr. McPherson stated that in Mr. Perez's justification, he indicated that he was not aware that a building permit was required. In light of the permit that was denied in 1995, Mr. McPherson wanted to know if that was an incorrect statement. Mr. Burgos stated that he wrote the statement for Mr. Perez not realizing that Mr. Perez had applied for the building permit. Mr. Kelley stated it appeared that the applicant was denied the building permit and that he went ahead and did the construction anyway. Mr. Burgos reiterated that he had not seen the 1995 building permit and that the person that filled out the paperwork for Mr. Perez, filled

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out the entire application, and Mr. Perez does not speak English and that he signed the application unknowingly.

Mr. Hammack wanted to know who represented Mr. Perez previously, in which Mr. Burgos replied, Javier Savaleta. Mr. Hammack wanted to know whether or not Mr. Savaleta informed Mr. Perez that his application was denied, to which Mr. Perez replied, no. Mr. Savaleta is a subcontractor and there was a falling out between Mr. Perez and Mr. Savaleta. After the falling out, Mr. Savaleta refused to help Mr. Perez any longer.

Mr. Hammack wanted to know if Mr. Perez was in the construction trade, in which Mr. Perez replied that he was and stated that he worked with drywall, electricity, and other odd jobs. Mr. McPherson asked for photographs showing the extent of the construction in which Mr. Burgos replied that the garage was already enclosed and there was only some drywall that needed to be completed.

Mr. Burgos stated that the issue before the Board was the fact that the minimum yard requirement is 12 feet and it was now 10.5 feet with the existing carport, that the carport was there when Mr. Perez bought the house. Mr. Kelley stated that if Mr. Perez had come before the Board prior to enclosing the garage, a variance may have been approved. The problem was that the building permit was denied and it appears that Mr. Perez ignored that and enclosed the garage anyway.

Mr. Pammel made a motion to defer the case in order to find out from the builder that Mr. Perez did not understand the process. Mr. Hammack stated that he wanted Mr. Savaleta to appear before the Board to verify that Mr. Perez was not notified that he needed a building permit. He stated that Mr. Perez is in the construction trade and that he should have been aware that he needed a permit.

Mr. Pammel noted for the record that there was a violation initially because there was a storage structure that encroached upon the side yard. There was an error in existence. Even though it was an error, it still required a variance. If Mr. Perez had come before the Board to request a variance, one of the requirements would have been that the addition be compatible with the existing structure. The existing structure is not compatible.

The motion carried by a vote of 5-1, with Mr. Dively voting, nay. The case was deferred for two weeks to get a statement from Mr. Savaleta on the issue. Ms. Langdon suggested the night meeting of December 16, 1997 at 8:00 p.m. Chairman DiGiulian was absent from the meeting.

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Page 164, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM T. & INES M. IRELAN, VC 97-M-094, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.83 ft. from side lot line. Located at 3408 Mansfield Rd. on approx. 24,674 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1((11))997A.

Mr. Hammack disclosed that he served as co-counsel with Mr. Ireland in a law case that ended in February of last year, but that there had been no other business relationship.

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. William Ireland, 3408 Mansfield Road, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit an attached garage to be located 8.83 feet from a side lot line, therefore, a variance of 6.17 feet was requested.

Mr. Ireland, the applicant, requested that the Board approve the variance to permit construction of an attached garage on the north side of the applicant's home. There are two exceptional characteristics that created the need for the variance, the irregular shape and the topography. The lot is pie-shaped on the southside of the house and the yard slopes. He expressed his desire to have shelter for his vehicles and a

secure place to store lawn equipment. He explained that his property has access to Lake Barcroft and that people intrude on his property occasionally. The garage would eliminate this problem.

There were no speakers either in support or in opposition of the application.

Mr. Dively made a motion to grant VC 97-M-094 for reasons noted in the Resolution.

Mr. Ribble commented that there had been no precedent, that each case is looked at individually, even at Lake Barcroft. There had been many variances granted in that area.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM T. & INES M. IRELAN, VC 97-M-094, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.83 ft. from side lot line. Located at 3408 Mansfield Rd. on approx. 24,674 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1((11))997A. 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 2, 1997; and

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

1. The lot lines are convergent towards the rear.
2. There are topographic considerations to be made.

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

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

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 attached garage shown on the plat prepared by Harold A. Logan, dated July 31, 1992, revised by Walter C. Sampsell, Jr. on September 16, 1997, 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. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 166, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN P. PITLER, VC 97-D-095, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line. Located at 7006 Elizabeth Dr. on approx. 18,717 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2((25))132.

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. Steven Pitler, 7006 Elizabeth Drive, McLean, Virginia replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit an attached garage addition to be located 4.6 feet from a side lot line, therefore, a variance of 7.4 feet was requested.

Mr. Pitler, the applicant, stated that he had already addressed the issues in his statement submitted to the Board. He requested approval to construct an attached single car garage which would increase security for his wife, their car and their belongings. In going through the process, he discovered an error in the plat he received when he purchased the house which indicated that the house was 22 feet from the property line at the closest point, when, in fact, it is only 17 feet from the closest point. Mr. Pitler decided that if he put the garage towards the front of the house, he could put it over the existing driveway so that he would not have to pave over any additional grass and would be able to save a large tree. Mr. Pitler thought the situation to

be unique in that they thought that they had more land to work with. He stated that his neighbor was opposing the application.

Mr. McPherson asked Mr. Pitler when he purchased the property and whether or not a survey was obtained at that time. Mr. Pitler replied that he purchased the property in 1994, but did not look at the survey very carefully. Mr. Pitler stated that it appeared that his neighbor's fence was not on the property line but several feet back on to his property and that his neighbor had property on Mr. Pitler's side of the fence.

There were no speakers in support of the application.

Murray Minster, 7008 Elizabeth Drive, Falls Church, Virginia, spoke in opposition to the application. Mr. Minster stated that he had lived on that property for 37 years. He voiced concern about a drainage problem due to the fact that 20 years ago, water from that side of the house seeped into his dining room. This drainage problem was resolved, but he was concerned about the drainage problem reoccurring with the building of his neighbor's garage.

Mr. Hammack stated that the photographs submitted to the Board showed black top where the garage would be constructed and asked how long it had been in existence and whether Mr. Minster had had any drainage problems since it had been constructed. Mr. Minster replied that it had been there for the past year and that he had not had any drainage problems because the black top drained towards the applicant's house.

Mr. Pitler in rebuttal stated that he has had a good relationship with his neighbor and was surprised at the turn of events. He stated that the addition would not have an effect on Mr. Minster's property. Mr. Pitler just resurfaced the driveway and did not enlarge where the garage would be. He stated that he planned to have a pitched roof so that the water would drain towards the front and back of the house and not on Mr. Minster's side.

Mr. Hammack made a motion to grant SP 97-V-050 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN P. PITLER, VC 97-D-095, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line. Located at 7006 Elizabeth Dr. on approx. 18,717 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2((25))132. 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 2, 1997; and

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

1. The applicant has met the nine required standards for the granting of a variance.
2. The addition to Mr. Schuller's survey from 1973 indicates a sizable storm sewer easement that runs across the northeast property line of Pitler property which would preclude any development along the property line all the way to the rear of the lot.
3. There is no other good place to construct a garage in conjunction with the addition that is shown on the back of the property.
4. This is an appropriate case.
5. The frontage of the property totals about 74 feet. It is a fairly narrow frontage. There is depth to the property and an irregular shape across the back.

6. A large part of the yard is covered with impervious surface.
7. There has not been a water problem as a result of the impervious surface.
8. The additional roof area on the garage should not create a problem for the adjacent neighbor.
9. Mr. Pitler has indicated that he would try to address any of the drainage problems by directing down spouts away from the neighbor's 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 an attached garage shown on the plat prepared by Kenneth W. White, dated September 17, 1997, 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. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1997. This date shall be deemed to be the final approval date of this variance.

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Page 169, December 2, 1997, (Tape 1), Scheduled case of:

9:00 A.M. BURGUNDY FARM COUNTRY DAY SCHOOL, SPA 93-L-015, Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 93-L-015 for community pool to permit building addition, site modifications, and increase in parking. Located at 3700 Burgundy Rd. on approx. 23.22 ac. of land zoned R-4. Lee District. Tax Map 82-2((1))5, 6, 8. (In association w/SEA 93-L-014)

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. Dave Oliver of Walter L. Phillips, 207 Park Avenue, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Exception and Zoning Branch, made staff's presentation as outlined in the staff report. The applicant requested an amendment to SP 93-L-015 to permit continuation of an existing community pool use and to permit an updated enlargement of an existing pool house. The applicant also requested site modifications and an increase in parking as shown on the SEA/SPA plat. The application is in conjunction with SEA 93-L-014 approved by the Board of Supervisors (BOS) on November 24, 1997, subject to revised development conditions dated November 3, 1997.

Mr. Oliver, agent for the applicant, asked that the Board reapprove the 1993, special use permit for continued use of the swimming pool on the site. The swimming pool is used primarily for instruction and free play for the summer school and is also used by local neighbors. There are 50 memberships authorized. The maximum use after school hours has been 5-10 people in the 4-8:00 p.m. area which is the only time it is used by the neighbors during the week. The applicant requested continued use of the pool for the school facility. The main reason that the applicant appeared before the Board was because the application had been modified which reoriented some of the buildings on the site to make things more efficient to build and it reduced the impact on adjacent properties.

There were no speakers either in support or in opposition of the application.

Mr. Pammel made a motion to grant SPA 93-L-015 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BURGUNDY FARM COUNTRY DAY SCHOOL, SPA 93-L-015, Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 93-L-015 for community pool to permit building addition, site modifications, and increase in parking. Located at 3700 Burgundy Rd. on approx. 23.22 ac. of land zoned R-4. Lee District. Tax Map 82-2((1))5, 6, 8. (In association w/SEA 93-L-014). 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 2, 1997; and

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

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1. The applicant is the owner of the property.
2. The reasons stated in the staff report dated October 22, 1997, are incorporated into the findings of fact.

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 Exception is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- *2. This Special Permit is granted only for the purpose(s), structure(s) and/or uses(s) indicated on the special exception/special permit plat entitled Burgundy Farm Country Day School, Inc. And prepared by Walter L. Phillips, which is dated April 28, 1997, as revised to September 1, 1997 and approved with this application, as qualified by these development conditions.
- *3. A copy of the Special permit and the Non-residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- *4. A soil survey shall be completed if determined necessary by the Director, Department of Environmental Management (DEM), prior to site plan approval. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances resulting in instability are found in the immediate vicinity of the pool, than the pool shall be engineered and reconstructed to ensure pool stability, including the installation of hydrostatic relief valves and other appropriate measures, as determined by DEM.
- *5. If determined necessary by DEM, a geotechnical study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan.
- *6. The pool shall be limited to a maximum of 78 bathers at any one time.
- *7. There shall be no more than four (4) league swim meets conducted at this facility per year. All parking shall be accommodated on site.
- *8. 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.

- *9. 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.

- *10. The regular hours of operation for the swimming pool shall not exceed 9:00 am to 9:00 pm.
- *11. A landscape plan shall be submitted for review and approval of the Urban Forestry Branch prior to the time of final site plan approval. This landscape plan shall include a tree supplemental plan for the transitional screening area north of the proposed new parking area and a tree survey of individual trees located in the area of the proposed drainage channel. The landscape plan shall include sufficient vegetative screening to soften the visual impact for adjacent residents of the proposed new parking area near the north boundary, to the satisfaction of the Urban Forester. Any additional landscaping required by the Urban Forester on the north boundary shall be installed at time of construction of the parking lot. The final location of all supplemental vegetation provided shall be determined by the Urban Forester. The Urban Forester shall review and approve a tree preservation plan for trees to be preserved within the clearing and grading areas.

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. Chairman DiGiulian was not present for the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 171, December 2, 1997, (Tape 1), Scheduled case of:

9:30 A.M. AMERICAN LEGION, INC., POST 176, SPRINGFIELD, VIRGINIA, A 1997-LE-27, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a portable sign in violation of Par. 2 Sect. 12-104 of the Zoning Ordinance. Located at 6520 Amherst Ave. on approx. 39,241 sq. ft. of land zoned C-2, HC, SC. Lee District. Tax Map 90-2((1))5A.

Vice Chairman Ribble noted from the agenda that the notices were not in order. William Shoup, Deputy Zoning Administrator, indicated that that was correct, that the appellant attempted to do the notices but that several were incorrect. Mr. Shoup suggested that the case be deferred to February 3, 1998.

The motion was so moved by Mr. Hammack and seconded by Mr. Pammel.

Edwin Denze, Judge Advocate of Post 176, stated that a deferral was requested so that all abutting properties could be notified.

Vice Chairman Ribble stated that the case would be deferred to February 3, 1998, at 9:30 a.m. The vote was unanimous.

Mr. Hammack commented that he did not know why the Board would be antagonized given that Mr. Denze did all that he could to get the notices processed on time. He stated that the Board was not antagonized unless applicants delay purposely. Mr. Denze replied that he was surprised that it was even stated that the Board would be antagonized because he had found the Board to be very objective. Mr. Denze stated that he was concerned about a map that he was given that showed one of the properties to be the appellant and that one of the abutting properties owned three other properties.

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Page 172, December 2, 1997, (Tape 1), Scheduled case of:

9:30 A.M. J.L. TREE SERVICE APPEAL, A 1997-PR-015, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the minor site plan and Non-Residential Use Permit (Non-RUP) for the appellants' storage use have expired and that the continued storage of mulch, wood, company vehicles and equipment on the property without a valid Non-RUP is in violation of Zoning Ordinance provisions. Located at 3120 Spring St. on approx. 190,689 sq. ft. of land zoned I-5. Providence District. Tax Map 48-3((1))25. (DEF. FROM 8/12/97 and 10/7/97)

Vice Chairman Ribble noted that the notices were not in order.

George Trowbridge, agent for the appellant, indicated that there was a new site plan and that the the appellant felt that they could withdraw the appeal, that is why the notices were not done. Mr. Trowbridge stated that he felt that the Board of Zoning Appeals should not be burdened with J.L. Tree Service anymore.

Mr. Hammack asked if the appellant needed additional time or would the withdrawal be effective immediately, in which Mr. Trowbridge replied, that the appellant was prepared to withdraw right then. Mr. Trowbridge stated that they had a new site plan but did not have the Non-Residential Use Permit.

Mr. McPherson, based on the representation of counsel, moved to accept the withdrawal. The motion was seconded by Mr Hammack which carried by a vote of 6-0.

William Shoup, Deputy Zoning Administrator, stated that the appellants were moving to diligently resolve things and that he had no objection to the withdrawal.

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Mr. Dively asked that staff submit a report to the Board regarding police problems, especially at Sharkys, surrounding billiard halls in Centreville. Susan Langdon, Chief, Special Permits and Variance Branch, stated that the police department would be contacted by staff.

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Page 172, December 2, 1997, (Tape 1), Action Item:

Support for Mr. McPherson's Reappointment to the BZA

Mr. Pammel made a motion that the Board unanimously endorse the reappointment of Mr. McPherson to another term on the Board of Zoning Appeals. Mr. McPherson stated that although he appreciated the

comments made by Mr. Pammel, he had requested that Judge Bach obtain someone else. Mr. McPherson explained that he was on the Board just for three years to complete the term of someone else and that he felt that it was now time for someone else to fill in.

The meeting adjourned at 10:50 a.m.

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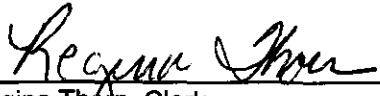
Mr. Pammel moved to defer the approval of the November 25, 1997, Resolutions until December 9, 1997. The motion was seconded by Mr. Dively which carried by a vote of 6-0.


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

Minutes by: Denise Snyder, Deputy Clerk

Approved on: January 20, 1998


Regina Thoin, Clerk
Board of Zoning Appeals


John Ribble, Vice 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 9, 1997. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Timothy McPherson; Robert Kelley; and James Pammel. Mr. John DiGiulian and Mr. Paul Hammack were not present for the meeting.

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Vice Chairman Ribble called the meeting to order at 9:10 A.M. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 125, December 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. MCDONALD'S CORPORATION, VC 96-H-091, 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. The property is located at 12184 Glade Dr. on approx. 1.20 ac. of land zoned PRC. Hunter Mill District. Tax Map 26-1((13))3. (In association w/SE 96-H-032).

Tracey Steele, the applicant's agent, requested an indefinite deferral of the hearing because of the denial of the special exception request by the Board of Supervisors. Ms. Steele said the applicant wants to preserve the opportunity to return to the Board of Appeals (BZA) should the underlying special exception application be resolved in another manner.

Vice Chairman Ribble asked if staff had any problem with the request and staff responded by saying that staff did not have a problem with the deferral request and that the application would be placed on an indefinite deferral list and that staff would check with the applicant periodically.

Mr. Dively moved to grant the deferral request. Mr. Kelley seconded the motion and it carried by a vote of 5-0.

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Page 125, December 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. DIEHL CORP. OF VA T/A O'TOOLE'S ROADHOUSE RESTAURANT, SP 97-Y-043, Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit billiard hall. Located at 5728 and 5732 Pickwick Rd. on approx. 4.03 ac. of land zoned C-6, R20, WS, HC, SC. Sully District. Tax Map 54-4((1))116.

Mr. Dively stated that before the Board heard the applicant, they should look at a memorandum before the Board concerning the issue surrounding the Shark Club. He said that there have several events at the Shark Club that were reported by the Fairfax County Police. He asked that someone from the club come before the Board to explain what is going on there. Mr. Dively also suggested that the Supervisor's office be apprised and that the Board try to get some public comment.

Vice Chairman Ribble asked if there were any notice of violations that staff was aware of and Susan Langdon, Chief, Special Permit and Variance Branch responded by saying that she understood that the Zoning Administration is working with the Shark Club and is in the process of issuing violations to them, but that she did not believe the violations have actually been sent to the applicant as yet.

Mr. Dively made a motion that the process be speeded up and that he would like to have some report on the zoning violations and public comments from the Supervisor's office. He also stated that an explanation from the Shark Club is expected by the Board within a month.

Staff suggested a meeting date of January 13, 1998, at 9:30 A.M. Mr. Dively then stated that before the January 13th meeting, he would like to see what the zoning violations are for the Shark Club.

Vice Chairman Ribble called the applicant to the podium. Tom Diehl, 5728 and 5732 Pickwick Road, Centreville, stated that he is the owner of the O'Toole's Roadhouse Restaurant and that he reaffirmed the affidavit.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined

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in the staff report. The applicant is requesting a special permit to expand an existing eating establishment to establish a billiard hall. The existing eating establishment occupies 5,760 square feet, the billiard hall would occupy 2,880 square feet. The hours of operation would remain the same, 11:00 A.M. to 2:00 A.M. daily. The proposed development conditions have been revised to reflect submission of the revised plat (Condition #2) and to require that parking be provided in accordance with the provisions of Article 11 of the Zoning Ordinance. Staff recommended approval of this application subject to the revised development conditions dated December 9, 1997.

Mr. Diehl said he wants to provide existing customers with an additional recreation activity that has become popular around this area. He stated that he wants to put ten tables in space that will be properly managed and supervised as it has been for the past nine years in Centreville. He said this will be a place where families can come and have a good time.

Mr. Kelley asked staff how many pool tables can the applicant put in without needing a special permit and staff responded by saying that is a determination made individually by the Zoning Administrator when the cases come in.

Susan Langdon, Chief, Special Permit and Variance Branch, responded by saying that staff could not speak specifically to this case, but by-right use is determined by the size of the restaurant, the size of the pool hall area, how many tables are in the restaurant and the number of seats available.

There was discussion by Board members concerning the number of tables allowed without a special permit. Mr. Kelley said he believed eight tables were allowed without a special permit. Mr. Diehl stated that the question came up at the beginning of the process and that it was looked into by staff. He said he was told this was the route he had to follow.

Mr. Kelley and Mr. Dively suggested that staff should look into this further since there had been previous history, especially along the Route 1 corridor.

Mr. Dively said that given the report on the Shark Club, he did not believe that the behavior in Centreville was any different from the Route 1 corridor. He said he wants to see what has been the standard development conditions that have been applied in other cases regarding billiard halls and whether there should be additional conditions. He stated that if the Board deviates from these standards, they could give reasons for the deviation before the Board vote on the application.

Ms. Langdon responded by saying that staff can provide a copy of approved conditions. She said that when new cases come in, staff goes back to the old case and applies the standard conditions. She said that 2:00 a.m. is standard closing time approved for most billiard parlors.

Mr. Kelley said that this is the first case he has seen as an existing restaurant that wanted to put in a number of pool tables under a special permit and that was the reason for his previous questions. He further stated that the applicant has been in operation for nine years and there has not been any extraordinary police activity. There was further discussion among Board members concerning other billiard parlors and their standard operating times.

There were no speakers supporting or opposing the application. Vice Chairman Ribble closed the public hearing.

Mr. Dively said he would like to be more specific on which conditions are included or not included and why, and what is allowed by right, and moved to continue the case for one week.

Mr. Pammel moved to accept Mr. Dively's motion that the case be continued for one week to December 16, 1997, at 8:00 P.M. in order that staff may make a determination on the conditions and what is allowed by right. The motion was granted with a vote of 4-1, with Mr. Kelley voting nay.

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9:00 A.M. ZACK H. SHELLEY, JR., SP 97-V-049, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.2 ft. from side lot line. Located at 1212 Falster Rd. on approx. 10,573 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((10))40.

Vice Chairman Ribble called the applicant to the podium and asked if the application before the Board of Zoning Appeals (BZA) was complete and accurate. Zack Shelley, 1212 Falster Road, Mt. Vernon, said it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant is requesting a special permit for error in building location to permit a carport to remain 0.2 foot from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 District with an extension for carports of 5 feet. The amount of error is 6.8 feet or 97 percent.

There was no question to staff and Vice Chairman Ribble called the applicant back to the podium to give his justification.

Mr. Shelley complimented various County staff for their help. He said the carport was constructed in 1983 without a building permit. He said the error of not obtaining a building permit at the time was his. He further stated that the restrictions in Deed allowed for a zero lot line additions of a carport but that he now found out that the Zoning Ordinance does not allow for that. He said that the reduction is not detrimental to the use and enjoyment of other properties in the immediate vicinity.

Mr. Shelley stated that prior to constructing the carport, he and his wife asked for approval of the proposed construction from the adjacent property owners and the property owners concurred with the construction. He said the carport water run-off goes directly down the driveway, but that about one year ago, one neighbor complained that too much water was running down the property line from his property. He said all guttering systems were designed to release roof, carport, and deck rain water.

Mr. Shelley said that his deck in the backyard has a roof underneath which drains water to the other side of the house instead of on the carport side of the house. He stated that because of the guttering system on the house, which was designed during construction, only 1,650 square feet of his 10,573 square feet property or 17 percent is subject to water shed to the carport side of the house. He stated that should the carport be torn down, the roof coverage would add directly to the additional water run-off onto the driveway pad which is now covered by the carport and onto the adjacent property. Mr. Shelley also said that there is a large oak tree which is two and one half feet in diameter that blocks the backyard from the front yard and the carport at ground level. Mr. Shelley presented pictures showing the layout of his house, carport, and the water downspout.

Mr. McPherson asked the applicant to show the picture which showed the driveway and the property line. He asked the applicant if the stockade fence was on the property line and the applicant responded by saying that it was assumed for years that it was on the property line. The applicant further stated that he found out during a survey that the fence was not on his property line but the neighbor's property.

Mr. McPherson asked the applicant to show the carport on the plat and to describe the history of its construction because part on the plat was shaded and part was not. The applicant said that both shaded areas on the plat showing the carport were constructed at the same time. Mr. McPherson further asked the applicant if the reason for the notch was the tree and the applicant responded saying yes it is and that the tree was apparently planted there in 1962 by the people who built the house. Mr. McPherson responded by saying that if Mr. Hammack was present, he would probably say that the he has a problem with this since the carport was so close to the property line. Mr. McPherson then asked the applicant if he had any suggestion to making something work for the carport.

The applicant stated that if the carport roof was taken down, water would run off on the left side of the property and that would be a problem. He said that he understood the concrete pad could remain because it can go right to the property line. He said that the concrete pad is less likely to interfere with the water flow down the property line any more than the tree that remains.

Mr. McPherson said that he wanted to be sure that the applicant was asking for approval of the carport as it

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is currently built and the applicant responded by saying that was correct.

Mr. Kelley asked why the case was before the BZA and staff responded saying that there was a complaint and that a notice of violation was issued.

Mr. Dively asked who made the complaint and the applicant responded saying Mrs. Shores, his neighbor.

Vice Chairman asked if there were speakers in support or opposition.

Rachel Shores, 1210 Falster Road, said that the applicant and has constructed the carport without obtaining a building permit or an engineering study which has caused some problems. She said the addition extends to within one and one half feet of her property which has caused her the loss of privacy and erosion of her property. Ms. Shores stated that property owners in the area would suffer a decline in value as a result of the structure that is of low quality construction and design which does not blend with the surrounding properties. She said the carport resembles structures that are used for housing tractors and other farm equipment, and that the carport is not in compliance with others in the neighborhood.

Mr. Kelley asked Ms. Shores if the complaint was caused by the applicant's construction of the carport, or the recent widening of the driveway and she responded by saying that this started 14 years ago when the carport was constructed.

Hannelore Knoch, 8315 Lilac Lane, said she had concerns about the neighborhood and what it would look like if everyone was allowed to build on their property without going through the proper channels.

Mr. Shelley said in his rebuttal that when he built his carport 14 years ago, he hired professional contractors to put in the carport and the concrete driveway and his son also assisted the contractors. He further stated that the same contractor who put in his driveway put in Ms. Shores' driveway also. He said since the construction of the carport in 1983, it was accepted by his neighbors and that no one has been injured in the carport. He further stated that as far as the evergreen trees dying, he was told by a professional landscaper that water over a period of 14 years could not have killed them. He said he believed that since a tree was cut down on the neighbor's property, excessive sun may have contributed to them dying.

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

Mr. Dively asked about the status of a similar case concerning construction of an open carport which was constructed on the property line in Great Falls. He said that the carport was of brick construction and this one he believed to be wood construction.

Mr. McPherson responded by referring to the Beverly Manor case, VC 97-D-080 that was previously heard by the Board. The case was continued to January 27 for staff's determination on whether or not the structure is an attached or detached carport. Staff confirmed that staff was waiting on a decision.

Mr. Kelley said he wanted to defer the case for at least three months to give Mr. Shelley time to alleviate the water problem.

Mr. McPherson made a motion to deny the application. He said the structure is too close to the property line and would cause hardship to the other property owners. He further stated that there is no way to maintain the carport without trespassing onto the other property and even though the neighbors approved, he is concerned about future owners. Mr. McPherson also said that if the Board approved the structure, which is too close to the property line, it would set a bad precedent. He stated that he invited the applicant to come up with some workable alternatives of Plan B along the line of the rear portion of the edifice, which he believed to be 12.7 feet in width, but that the applicant insisted that his application be heard.

Mr. Pammel seconded the motion. He commented on a letter on record which stated that everyone should follow the prescribed criteria for obtaining building permits, which was not done. He said if the application was approved, a precedent would be set and others would follow the same route, and the Board would continue to have increasing number of requests for this type of relief.

Mr. Dively said he supported the motion and moved to waive the 12 months refiling period.

The motion to deny was granted with a vote of 5-0.

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

ZACK H. SHELLEY, JR., SP 97-V-049, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.2 ft. from side lot line. Located at 1212 Falster Rd. on approx. 10,573 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((10))40. 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 9, 1997; and

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

1. The applicant is the owner of the land.
2. The carport is too close to the property line.
3. The applicant acknowledged he built carport without building permit.
4. There is no way to maintain carport without getting onto neighbor's property.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 1997.

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Page 179, December 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. JESSE W. NEAL, SP 97-Y-044, Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements of the R-C District to permit construction of addition 17.0 ft. from side lot line. Located at 6232 Hidden Canyon Rd. on approx. 17,676 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 53-4((5))43.

Vice Chairman called the applicant to the podium and asked if the application before the Board of Zoning Appeals (BZA) was complete and accurate. Jesse W. Neal, 6232 hidden Canyon Road, said it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit for modification to minimum yard requirements in the R-C District to permit construction of a garage 17 feet from a side lot line. A minimum side yard of 20 feet is required in the R-C District, therefore, a modification of 3 feet is requested.

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In a question to staff, Mr. Pammel asked if the request before the Board would be in compliance with the property as it was previously zoned and staff responded by saying yes.

Mr. Neal said the lot size is 17,600 square feet and not 7,600 as he thought staff said. He said he has been the owner of the lot since February 1978 and has resided there 19 years. He said he applied for a permit in October 7, 1981, to build a footing and slab for a future garage which was approved on October 14, 1981. Since the property was down-zoned from R-2, which required a 15 foot setback, to R-C, WS, which required a 20 foot setback, he is asking for an additional 3 feet.

Mr. Neal said that the reason the construction has not been completed was due to financial obligations.

There was no one to speak in support or in opposition and Vice Chairman closed the public hearing.

Mr. Dively made a motion to grant SP 97-Y-044 for reasons noted the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report, dated December 2, 1997.

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

JESSE W. NEAL, SP 97-Y-044, Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements of the R-C District to permit construction of addition 17.0 ft. from side lot line. Located at 6232 Hidden Canyon Rd. on approx. 17,676 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 53-4((5))43. 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 9, 1997; and

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

1. The applicant is the owner of the land.
2. The addition would have been allowed under previous zoning.
3. This is a modest 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 Sect(s). 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 an addition shown on the plat prepared by Douglas M. Detwiller, dated February 28, 1978, revised by J. Neal, dated May 7, 1997, 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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval *unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

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

*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. DiGiulian and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 181, December 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. GEORGE Z. KONTZIAS, SP 97-D-046, Appl. under Sect(s) 3-403 of the Zoning Ordinance to permit open-air produce stand. Located at 6732 Lowell Av. on approx. 13,795 sq. ft. of land zoned R-4, HC, SC. Dranesville District. Tax Map 30-2((9))56, pt. of 57.

Vice Chairman Ribble called the applicant to the podium and asked if the application before the Board of Zoning Appeals (BZA) was complete and accurate. George Kontzias, 1434 Lady Bird Drive, McLean, Virginia said it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit to allow an open-air produce stand to be used as a seasonal farm market for sale of produce, flowers, and plants. Staff recommended approval subject to the revised proposed development conditions dated December 9, 1997.

Mr. McPherson said that having being sensitized by the Craven's dispute, he noted the statement of justification and the applicant's request for the type of operation. The applicant has requested seasonal produce, flowers, and plants. He said the development conditions, #6 in particular, are much more specific. He asked whether this condition was discussed with the applicant and whether this was intentionally done to restrict the type of materials that could be sold.

Ms. Langdon responded by saying that staff looked at other open-air produce stands and also spoke with the Zoning Administrator as to the type of materials that could be sold at these produce stands.

The conditions were developed with this in mind and what is normally allowed under seasonal produce.

Mr. Kontzias said that the property is not developed but he hoped it would be within the next year. However, he asked the Board to grant this permit so as to enable him to have some income in the interim in order to absorb the taxes and the payments on the property.

Mr. McPherson asked the applicant if he was familiar with the outline in the revised development conditions about the sales limitations under Condition #6. Mr. Kontzias said that the corner was used as an open-air space for the last 15 years and he planned to continue selling the same products, which was trees, plants, and flowers.

Mr. McPherson asked the applicant if he understands that Condition #6 is what the sales will be limited to if the application is granted and the applicant responded by saying yes.

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

Mr. Kelley made a motion to grant SP 97-D-046 subject to the revised development conditions dated December 9, 1997.

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

GEORGE Z. KONTZIAS, SP 97-D-046, Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit open-air produce stand. Located at 6732 Lowell Av. on approx. 13,795 sq. ft. of land zoned R-4, HC, SC. Dranesville District. Tax Map 30-2((9))56, pt. of 57. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 9, 1997; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 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, 6732 Lowell Avenue, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap, Land Surveyor, dated July 31, 1997, 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 daylight hours, daily, April through November.
6. Sales at the open air produce stand shall be limited to:
 - Farm products - any food or food related items which might originate on a farm including but not limited to: fruits and vegetables, cut flowers, nuts, herbs, preserved fruits and vegetables, etc.
 - Nursery items - plants including shrubs, herbs, perennials, bedding plants, potted flowers and other ground coverings, and seeds, etc.
 - No lawn equipment, such as rakes, shovels or clippers, including mechanized equipment or prepared foods are to be sold.
7. Ten (10) parking spaces shall be provided as shown on the special permit plat, unless a shared

parking agreement or parking reduction is approved by the Department of Environmental Management (DEM).

8. A maximum of two (2) employees shall be on site at any one time.
9. Approval of this special permit shall not preclude approval of Temporary Special Permits in accordance with Sect. 8-810 of the Zoning Ordinance.
10. A sign permit shall be obtained for any sign proposed for this site and shall be in conformance with the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. 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 parking lot and driveway 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. McPherson seconded the motion which carried by a vote of 4-0. Mr. Dively was not present for the vote and Mr. DiGiulian and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 183, December 9, 1997 (Tape 1), Scheduled case of:

9:00 A.M. DUNG THI YOUNG, SPA 92-L-004-2, Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-004 for billiard hall to permit change in development conditions. Located at 7064 Spring Hill Garden Dr. on approx. 11.80 ac. of land zoned C-6, SC, HC. Lee District. Tax Map 90-2((1))17; 90-2((2))1.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate and William Thomas, the applicant's agent, 1775 Jaimeson Avenue, Alexandria, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a change in the conditions of approval for the special permit to allow the sale and consumption of alcoholic beverages. The applicant also requested increase in the hours of operation from 11:00 P.M. to 12:00 Midnight.

There was a question from the Board concerning the application and whether or not it was advertised correctly for a change in hours of operation. Ms. Langdon, Chief, Special Permit and Variance Branch, responded by saying that the advertisement stated modification of development conditions but was not specific as to which conditions and that the advertisement was correct.

Mr. Thomas said that at the time the applicant made the original application, she did not want alcoholic beverages. He said this was a new use in the County and that the applicant wanted to get in and get established with the hope of coming back to the Board to ask for this permit. Mr. Thomas stated that customers visiting the café continued to ask the applicant for alcoholic beverages to be served with their meals and so this application is in direct response to their requests. He stated that in the amendment request, the applicant requested hours of operation be extended to 12:00 Midnight. He referred to O'Toole's Restaurant and other application in the area stating that their hours of operation is until 2:00 A.M.

weekdays. Mr. Thomas stated that the shopping center is built with brick walls around it but that it still abuts residential properties several hundred feet away. He said to be consistent with other applications that have allowed alcoholic beverages in the past, he proposed the idea of including a condition that states that the applicant shall comply with all the alcoholic beverages control laws of the State of Virginia, which is a condition that has been standard in the past.

Mr. Thomas stated that the applicant has been in operation for over 5 years and that she has been a good neighbor, and that there is no opposition from any of the neighbors.

Mr. Dively asked if there have been any police issues or reports. Mr. Thomas responded by saying that there were 9 events over the course of 5 years. He said most of the events were at the owner's initiation regarding car theft and break-ins. He further stated that he did not have reports from the other cafes in the area.

Mr. McPherson asked Mr. Thomas if this was the Grey Wall billiard parlor and Mr. Thomas responded saying it was.

Mr. Kelley asked Mr. Thomas what is the standard for not having to obtain a special permit approval for a billiard parlor.

Mr. Thomas said he believed the standard to be 15 percent of the floor area of the restaurant. He also said that in speaking with staff, he understood that there is some interpretive recognition of how much of the space is restaurant and the number of seats and tables. He said that his understanding is that an area for billiards per table takes about 300 and 400 square feet.

Mr. Dively asked if there were only three tables in the eating area and Mr. Thomas responded saying that there are three separate tables in the eating area. Mr. Thomas said that there is a bar area where people sit at the tables and eat their foods while playing. He said that this is not a restaurant with billiards but billiards with a restaurant that has an atmosphere conducive with a recreation establishment.

With no further questions for the applicant's agent and no speaker in support or opposition of the application, Vice Chairman Ribble closed the public hearing.

Mr. Dively made a motion to continue the hearing for the case for one week and requested that staff provide information on what are the standard and nonstandard development conditions imposed on billiard halls.

Vice Chairman Ribble commented that when the case was originally heard, it was very controversial. He said he believed that a lot of the police reports had to do with what people had heard in the parking lot, as well as in the establishment itself, but that what was presented before the Board was what happened in the establishment only.

Vice Chairman Ribble asked staff to clarify the conditions. Ms. Schilling said that the development conditions contained in the staff report were carried over from the previous approvals that were the result of public hearings that occurred, she believed, in 1992. She said that there were some concerns from citizen on the treatment of minors within the establishment and that is why many of the development conditions are separate from the first case that the Board heard this morning.

Mr. Kelley said he would like to see the development conditions standardized and he seconded the motion to continue the hearing.

During the discussion, Mr. McPherson stated that his thoughts concern the fact that these are really comparing apples and oranges where the applicant has asked for a specific modification to one development condition. He said that it appears to him that the other development conditions are more restrictive than others that have been passed. He further stated that if the applicant has requested to have only one condition changed then he did not see the usefulness to continue, unless the Board intends to call up all the existing similarly situated permits to institutionalize development conditions across the board.

Vice Chairman Ribble said that he would like to get a better handle on what is happening in that shopping center as a result of the applicant's café and in other places.

Mr. Dively said he would like to see a standard set of conditions to protect the community.

Mr. Pammel said he does not believe that the conditions will change with respect to juveniles because they were developed as a result of the public hearing. He said that he would not suggest that the Board change those conditions in this instance. There was further discussion among the Board members concerning the standard conditions of the previous application heard before the Board concerning this establishment.

The motion to continue failed for lack of 4 votes.

Mr. Pammel made a second motion to grant SPA 92-L-004-2 to modify the previous special permit for commercial recreation and to amend the permit for a billiard parlor, to allow deletion of the development condition prohibiting the sale of alcoholic beverages, and to extend the period of time opened to 12:00 Midnight, weekdays, Sunday nights through Thursday nights, and 11:00 A.M. to 1:00 A.M. on Friday nights through Saturday nights subject to the development conditions contained in Appendix 1 of the staff report dated December 2, 1997, and Condition #12 to be added to state compliance with all State's Alcoholic Beverage Control (ABC) Board standards.

The second motion to grant the application was seconded by Mr. McPherson and it carried by a vote of 5-0.

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

DUNG THI YOUNG, SPA 92-L-004-2, Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-004 for billiard hall to permit change in development conditions. Located at 7064 Spring Hill Garden Dr. on approx. 11.80 ac. of land zoned C-6, SC, HC. Lee District. Tax Map 90-2((1))17; 90-2((2))1. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 9, 1997; and

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

1. The applicant is the owner of the land.
2. The applicant is requesting to modify the previous special permit for a billiard hall.
3. To allow deletion of the development condition prohibiting the sale of alcoholic beverages.
4. To extend the period of time open to 12:00 midnight.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 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, 7064 Spring Garden Drive, 3,464 square feet of tenant space occupied by the approved Billiard Hall, 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.

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2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Pedro A. Porro, AIA dated May 15, 1992, revised May 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 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 hours of operation shall not exceed 11:00 a.m. to 12:00 midnight. on Sunday night through Thursday night, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday night.
 6. The maximum number of employees shall not exceed 4 at any one time.
 7. A maximum of 11 pool tables, 3 tables (4 seats each) within the eating area, 7 seats at the bar and 9 standing tables (two seats each), shall be permitted within the premises.
 8. Parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the DEM.
 9. If required by the Department of Environmental Management (DEM), prior to issuance of the Non-Residential Use Permit, a parking tabulation shall be submitted to and approved by DEM which shows that the required parking for all uses can be provided in the shopping center or the size of the proposed use shall be limited to provide adequate parking.
 10. School children seventeen (17) years of age or under shall not be allowed on the premises during school hours of the regular school year, not including summer school; they shall not be allowed on the premises after 7:00 p.m. unless accompanied by an adult, parent or guardian, unless they are participating in an activity sponsored by the billiard café, such as billiard instructions or league play; all instructions and league play shall be supervised by the management.
 11. All signage shall conform with the provisions of Article 12, Signs of the Zoning Ordinance.
 12. The billiard hall shall operate in conformance with all applicable standards required by the Virginia Department of Alcoholic Beverage Control.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 187, December 9, 1997 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
David L. Pittman, VC 97-D-118

Mr. Dively moved to grant the Out-of-Turn hearing request for David L. Pittman, VC 97-D-118 to be heard on February 10, 1998 at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 5-0.

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Page 187, December 9, 1997 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
Lincoln P. Bloomfield, Jr. & Rebecca A. Meden, VC 97-V-119

Mr. Kelley moved to grant the Out-of-Turn hearing request for Lincoln P. Bloomfield, Jr. & Rebecca A. Meden, VC 97-V-119 to be heard on February 10, 1998, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 5-0.

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Page 187, December 9, 1997 (Tape 1), After Agenda Item:

Approval of December 2, 1997, Resolutions
Approval of November 25, 1997, and December 2, 1997, Resolutions and August 5, 1997, Minutes.

Mr. Pammel moved to approve the Resolutions and Minutes. Mr. Dively seconded the motion which carried by a vote of 5-0.

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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: Ann-Marie Wellington

Approved on: March 10, 1998


Susan C. Langdon, Chief

Special Permit and Variance Branch


John Ribble, Vice 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 16, 1997. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble.

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Chairman DiGiulian called the meeting to order at 8:05 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 189, December 16, 1997, (Tape 1), Scheduled case of:

8:00 P.M. DIEHL CORP. OF VA T/A O'TOOLE'S ROADHOUSE RESTAURANT, SP 97-Y-043, Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit billiard hall. Located at 5728 and 5732 Pickwick Rd. on approx. 4.03 ac. of land zoned C-6, R-20, WS, HC, SC. Sully District. Tax Map 54-4((1))116. (CONTINUED FROM 12/9/97 FOR DECISION ONLY)

Chairman DiGiulian announced that this public hearing had been continued, for decision only, from December 9th and that Mr. Dively had requested a report on the number of tables requested and how many are allowed by-right.

Susan Langdon, Chief, Special Permit and Variance Branch, called the Board's attention to staff's December 16, 1997 memorandum regarding the number of special permit approvals for billiard parlors, the approved conditions, and the number of billiard tables within billiard parlors that are allowed by-right which was distributed that evening.

William Shoup, Deputy Zoning Administrator, stated that the issue of billiard tables allowed by-right was not easily defined because it must be reviewed in the context of an accessory use which included numerous criteria and may involve a number of circumstances. Mr. Shoup said that he would, rather hesitatingly, surmise that no more than four billiard tables could be allowed by-right. He called the Board's attention to the handout being distributed that presented an "accessory use" definition, pointing out that the use must clearly be subordinate in purpose, area, and extent, and must serve the principle use. He listed a variety of factors and conditions that are considered when making a determination. Mr. Shoup pointed out that, in any given billiard establishment, there was an area for eating but, the primary focus was definitely that of billiards. Mr. Shoup also pointed out that when a larger establishment had a large number of restaurant seats, it was more difficult to determine whether the billiard component was accessory or not. Mr. Shoup said that O'Toole's Restaurant markets itself as a billiard place, and since it's primary focus was billiards, it was staff's determination that they would have to come under Special Permit approval.

Discussion followed among Board members and Mr. Shoup regarding accessory uses and what is accessory to a given use and the considerations when determining either.

Chairman DiGiulian called for a motion on the case.

Mr. McPherson moved to approve SP 97-Y-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions dated December 5, 1997 contained in the staff report dated December 2, 1997.

Mr. Dively commented that the conditions applied to the O'Toole's application were appropriate as they were typical of conditions applied to past billiard parlor applications, in particular the hours of operation and adherence to all Alcohol Beverage Control (ABC) laws. He called attention to a condition regarding an age limitation for youngsters playing pool adding that, in his opinion, its application was unnecessary for the O'Toole's special permit application as the Board was more concerned with underage drinking. Mr. Dively suggested that if there were a violation to the ABC laws, in addition to what the State may impose, the Board might also levy some kind of deterrent, or perhaps revoke the permit.

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

DIEHL CORP. OF VA T/A O'TOOLE'S ROADHOUSE RESTAURANT, SP 97-Y-043, Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit billiard hall. Located at 5728 and 5732 Pickwick Rd. on approx. 4.03 ac. of land zoned C-6, R-20, WS, HC, SC. Sully District. Tax Map 54-4((1))116. 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 16, 1997; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. From the information received by the BZA, it is determined that the request is reasonable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). C-6, HC, SC of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5728 & 5732 Pickwick Road (8,640 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 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 BC Consultants dated August 21, 1997, revised through November 25, 1997, 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 11:00 a.m. to 2:00 a.m., daily.
6. Any sign erected on the building shall be of a size and materials compatible with existing signs and shall be in conformance with the requirements of Article 12 of the Zoning Ordinance.
7. Parking shall be provided as determined by the Department of Environmental Management (DEM). If required by DEM, prior to issuance of the Non-Residential Use Permit, a parking

tabulation shall be submitted to and approved by DEM which shows that the required parking for all uses can be provided in the shopping center or the size of the proposed use and/or the number of seats, stools or billiard tables shall be reduced to provide adequate parking.

8. The maximum number of seats in the eating establishment shall be 171. The maximum number of bar stools shall be 73. The maximum number of billiard/pool tables shall be 10.
9. The applicant shall 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. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Hammack abstaining; Mr. Pammel was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 24, 1997. This date shall be deemed to be the final approval date of this special permit.

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Page 191, December 16, 1997, (Tape 1), Scheduled case of:

8:00 P.M. GARLAND L. NEESE, SR., & RUBY L. NEESE, A 1997-MV-030, Appeal Application under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are maintaining two separate dwelling units on one lot in violation of Sect(s). 2-501 of the Zoning Ordinance. Located at 7805 Schelhorn Rd. on approx. 33,595 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-1((7))(6)24.

James D. Turner, Esquire, with the firm of Thomas, Ballenger & Vogelmann located in Alexandria, Virginia, stated that he represented the appellants, Garland L. and Ruby L. Neese, whom neither were present because of a health situation. Mr. Turner requested a six-month deferral of the case in order to comply with staff's recommendation that the cited residence be removed and converted to a work shop.

William Shoup, Deputy Zoning Administrator, stated that, given the representation that the appellants were going to pursue compliance and that there were mitigating circumstances regarding the case, staff had no objection to a deferral. He added that staff recommended the morning of June 2, 1998 to hear the appeal.

As there was no objection, Mr. Ribble so moved. The motion was seconded by Mr. McPherson and carried unanimously by a 7-0 vote.

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Page 191, December 16, 1997, (Tape 1), Scheduled case of:

8:00 P.M. SALVADOR R. PEREZ, SP 97-L-032, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.5 ft. from side lot line. Located at 7304 Charlotte St. on approx. 10,720

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sq. ft. of land zoned R-3. Lee District. Tax Map 80-3((2))(35)17. (DEF. FROM 10/7/97 FOR NOTICES) (Continued from 12-2-97)

In response to Chairman DiGiulian's question, Mr. Marvin Burgos, 5519 Talon Court, Fairfax, Virginia, the agent for the applicant, explained that the contractor/friend who had assisted Mr. Perez with the renovations and whom, at the October 7th meeting, the Board had requested to appear at today's public hearing, had not responded. Mr. Burgos distributed pictures of the structure to the Board members while explaining that Mr. Perez was advised by County staff that he required a variance as well as a building permit. Mr. Burgos conceded that the existing carport had been enclosed without a variance, that it was too close to the neighbor's lot line, and although it was pointed out by Mr. Kelley that the building permit had been denied and that Mr. Perez had signed off on it, Mr. Burgos stated that Mr. Perez was unaware of what he had signed. He responded to several questions from Mr. Hammack regarding the extent of work completed. Mr. Burgos concurred that Mr. Perez was in violation, but because the structure was already enclosed and certain work completed, he was unable to devise a remedy. He reiterated that the structure could not be moved. Mr. Perez responded to questions from Board members regarding the enclosed carports in the neighborhood and the installation of windows.

Mr. McPherson moved to deny SP 97-L-032, commenting that, although there were numerous carports that were enclosed in the neighborhood, Mr. Perez had not followed proper procedure and the structure had numerous Code violations. Mr. McPherson pointed out that there were several issues which decided his motion to deny. He explained that, initially, the applicant had professed that he had not realized that a building permit was required, yet at a later date, a denied permit, was produced. In addition, in Mr. Perez's Letter of Justification, the room was to be utilized as a bedroom, and yet he testified that he would use the room as a computer room even though it really wasn't needed; he only sought to enclose his carport as had his neighbors.

Mr. Hammack concurred with Mr. McPherson's motion to deny commenting that he, too, believed that Mr. Perez was aware that a building permit was required before he commenced enclosing the carport. He submitted that, if Mr. Perez had requested a variance through the appropriate channels, he might have been inclined to have voted for its approval. Mr. Hammack also noted that presently, the structure has numerous Code violations, which could not be ignored and, although an unusual procedure for the BZA, he suggested that if the applicant were agreeable to have the structure inspected and report the findings to the BZA, then perhaps the Board would defer the decision to allow Mr. Perez the opportunity to make modifications so as to render the structure harmonious with the neighborhood.

Mr. Kelley commented that, in his opinion, the structure must conform and, therefore, the onus was on Mr. Perez to revert the carport to its original state, apply for a variance, and rebuild in compliance to Code requirements.

Mr. McPherson stated that the Board should not become involved with micro-managing applicants' construction problems.

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

SALVADOR R. PEREZ, SP 97-L-032, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.5 ft. from side lot line. Located at 7304 Charlotte St. on approx. 10,720 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3((2))(35)17. (DEF. FROM 10/7/97 FOR NOTICES) (Continued from 12-2-97). 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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 16, 1997; and

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

1. The applicant is the owner of the land.
2. Although there are other open carports that have been enclosed in the neighborhood, the subject one has too many Code violations.
3. In the applicant's June 12, 1997 Letter of Justification, he indicated that he was unaware of the building permit requirement, however, the record reflects that one had been applied for some other construction.
4. This Special Permit application has too many inconsistencies: the applicant's Letter of Justification seeks permission to construct a bedroom; the applicant's public hearing testimony requests permission to build a computer room; the applicant considers a computer room unnecessary and he only wants to enclose his carport as his neighbors have done.
5. The proposed construction is not harmonious nor compatible with the house nor 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 Sect(s). 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 unanimous vote of 7-0.

In order to allow Mr. Perez the opportunity to apply for a variance to correct the construction and then correctly complete it, Mr. Kelley moved to waive the 12-month waiting period to apply for a variance.

The motion was seconded by Mr. Ribble and carried unanimously.

The Board waived the 12-month waiting period for filing for variance.

In response to Mr. Burgos' question, Chairman DiGiulian clarified that Mr. Perez must take down what was constructed without a permit and then apply for a variance to allow him to build closer to the side property line than is allowed by the Ordinance.

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Page 193, December 16, 1997, (Tape 1), Action Item:

Approval of November 11, 1997 Minutes

There being no objection, Mr. Kelley moved to **APPROVE** the November 11, 1997 Minutes. The motion was seconded by Mr. Ribble and carried unanimously.

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Page 193, December 16, 1997, (Tape 1), Action Item:

Request for Additional Time to Commence Construction for
Bertrand A. Page, VC 95-L-019

Mr. McPherson moved to **ACCEPT** staff's recommendation of May 31, 1999. The motion was seconded by

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Mr. Hammack and carried unanimously.

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Page 194, December 16, 1997, (Tape 1), Action Item:

Reconsideration for Zack H. Shelley, Jr., SP 97-V-049

In response to Mr. McPherson's question, Susan Langdon, Chief, Special Permit and Variance Branch, verified that the Board had waived the 12-month waiting period for filing for variance and that Mr. Shelley was requesting that the Board reconsider its previous denial decision made at the December 9, 1997 public hearing so that he could continue with the same case.

Discussion followed among Board members regarding Mr. Shelley's application, the submission of a new proposal without the necessity to refile, the filing fee, and the time difference involved with refiling and rescheduling a new proposal/application.

Mr. Pammel then moved to **DENY** the request which was seconded by Mr. McPherson and carried unanimously.

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Page 194, December 16, 1997, (Tape 1), Action Item:

Approval of December 9, 1997 Resolutions

There being no objections, Mr. Ribble moved to **APPROVE** the December 9, 1997 Resolutions. The motion was seconded by Mr. McPherson and carried by a 6-0-1 vote with Mr. Hammack abstaining.


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As there was no other business to come before the Board, the meeting was adjourned at 8:47 p.m.

Minutes by: Paula McFarland

Approved on: May 26, 1998


Susan Langdon, Chief
Special Permit & Variance Branch/BZA


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 December 23, 1997. 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 9:12 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 _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. NELSON, MILDRED C. & EVERETT L., VC 97-L-093, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lot 1 having a lot width of 39.58 ft. Located at 6646 S. Kings Hy. on approx. 1.06 ac. of land zoned R-4. Lee District. Tax Map 92-2((1))26.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. Mr. James D. Turner, 124 S. Royal Street, Alexandria, Virginia, the agent for the applicant, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, presented staff's position as contained in the staff report dated December 16, 1997. She noted that the applicant could subdivide his lot into two properties by-right and pointed out that the approval of this variance could set an undesirable precedent. The surrounding lots were land-locked and the owners might attempt to replicate the subject application by seeking variance approval of pipestem access to these lots. Ms. Smolko stated that staff believed that the subject application did not meet all the applicable Zoning Ordinance provisions and if the Board of Zoning Appeals were to approve it, that their approval be conditioned by requiring conformance with the development conditions set forth in Appendix 1 of the staff report.

Mr. James D. Turner stated that the basis for Mrs. Nelson's variance request was financial need. He called the Board's attention to a sanitary sewer that ran through the property, pointing out that it had no easement recordation and that, if approved for the variance, the applicant would proffer dedication of that sanitary easement. He explained that only the two original entranceways would be used, that there would be no pipestem driveways and that the applicant would proffer road frontage improvements that would be a public benefit. Mr. Turner submitted that the proposed construction of three high-quality homes would increase the property values and that there was support for the proposal from the neighbors. Mr. Turner concurred with Mr. McPherson that the applicant could, by-right, develop the property into two lots and that Mrs. Nelson had no ownership rights in the surrounding lots.

Mr. Hammack called Mr. Turner's attention to the two letters in opposition which noted serious potential drainage problems and asked for his comments.

Mr. Turner explained that Mr. Miller, the author of an opposition letter, had a complaint with the County over the stormwater/sanitary sewer and not with his neighbor, Mrs. Nelson.

Mr. R. C. Fields, Jr., the applicant's engineer, 718 Jefferson Street, Alexandria, explained the plan they would submit to the Department of Environmental Management which would address the drainage concerns. He pointed out the plan's proposed tree save.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Before making his motion, Mr. Hammack noted that there were more compelling reasons for denial of this variance than for its approval, pointing out that staff had recommended denial because numerous development conditions had not been satisfied, specifically the fact that, by-right, the property could be developed into two lots, although it was not as economically beneficial to the applicant. Mr. Hammack moved to deny VC 97-L-093 for the reasons set forth in the staff report dated December 16, 1997.

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

NELSON, MILDRED C. & EVERETT L., VC 97-L-093, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lot 1 having a lot width of 39.58 ft. Located at 6646 S. Kings Hy. on approx. 1.06 ac. of land zoned R-4. Lee District. Tax Map 92-2((1))26. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 23, 1997; and

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

1. The applicants are the owners of the land.
2. An applicant's economic consequence is not within the Board of Zoning Appeals' purview for consideration.
3. The staff report recommends denial.
4. The applicants may, by-right, develop their parcel into two lots which often precludes a necessity for a variance.
5. The allowance of a third lot could exacerbate an already serious drainage and water run-off problem and this issue has not been addressed.

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. McPherson seconded the motion which carried by a unanimous of vote 5-0. Mr. Dively was not present for the vote;

Mr. Kelley was absent from the meeting

The Board waived the 12-month waiting period for refileing for a variance.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 7, 1998.

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Page _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. **MARGARET KELLY AND ESTATE OF HOLBERT FARTHING, VC 97-D-097, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into five lots and an outlot with proposed Lots 23B, 23C, 23D, 23E having a lot width of 6.0 ft. and 23A having a lot width of 92.0 ft. Located at 9038 Leesburg Pike on approx. 5.06 ac. of land zoned R-1. Dranesville District. Tax Map 19-4((1))23.**

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Leonard Forkas, Jr., 10207 Yellow Pine Drive, Vienna, replied that it was.

Julie Schilling, Staff Coordinator, presented staff's position as evidenced in the staff report dated December 16, 1997. She noted the change in the application, as evidenced in Addendum I, which included a revised affidavit. She said that several issues remained unresolved. Ms. Schilling pointed out that a revised variance plat, identified as Alternative B, was received just prior to the staff report's publication and that it was included in the Addendum. She explained that Alternative B's plat indicated a change in the location of the proposed pipestem to the northwest side of the property from the northeast side. She stated that staff had not had time to review the submission and that the issue of hardship still remained unaddressed.

Mr. Leonard Forkas, Jr., identified himself as the contract/purchaser of the property. He explained that his original plan to develop the property into five lots required him to dedicate a public street along the property's eastern boundary. After considering several factors, including the concerns of adjoining property owners, the retention of significant trees and the preservation of a substantial buffer, he revised his plat to relocate the road onto the western side of the property.

Mr. McPherson stated that, although appearing meritorious, the applicant's present Statement of Justification hadn't the benefit of staff's recommendation and it was appropriate to defer the public hearing.

Mr. Forkas stated that he had no objection to the deferral of his application.

Chairman DiGiulian asked if there was anyone present who wished to speak to the question of this application's deferral.

Ms. Becky Boslo, a Woodside Citizens Association board member, expressed her unfamiliarity with the zoning process and stated that additional time to effectively evaluate Mr. Forkas's proposal was appreciated. She stated that a March date was preferable.

Mr. McPherson then moved to defer VC 97-D-097 to the morning of March 3, 1998 which was seconded by Mr. Ribble and carried by a vote of 4-1 with Mr. Pammel opposed; Messieurs Dively and Kelley were not

present for the vote.

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Page _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE SLEEPY HOLLOW UNITED METHODIST CHURCH, SP 97-M-048, Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities and nursery school. Located at 3435 Sleepy Hollow Rd. on approx. 5.09 ac. of land zoned R-2. Mason District. Tax Map 60-2((33))1A.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, Esquire, McCandlish & Lillard, P.C., 11350 Random Hills Road, Suite 500, Fairfax, replied that it was.

Julie Schilling, Staff Coordinator, presented staff's position as contained in the staff report dated December 16, 1997. She noted that the issues regarding the provision for a trail would be addressed during the site plan review.

Steven K. Fox, Esquire, explained the request and that the changes were proposed to be implemented in four phases. He pointed out that after Phase III's conclusion, the intent was to start the preschool and have an enrollment of no more than 99 students. Mr. Fox called the Board's attention to modified and/or proposed changes to several development conditions regarding parking spaces, screening, buffering, landscaping, the road-frontage dedication, a beech tree's preservation, and the provision of a trail. He noted for the record, that the applicant objected to the requirement to provide a trail that ran along public property and suggested conditional language. He acknowledged Mr. Hammack's clarification that the trail issue was a matter for the Department of Environmental Management's consideration. Mr. Fox responded to Mr. McPherson's questions concerning seating for the congregation.

Chairman DiGiulian called for speakers in support of the application.

Jim Becker, the church's pastor, related the church's long-term growth plan, referred to as their "sense of vision". He explained that the plan originated in the 1960's, was under-built for the standards appropriate at that time, and at this time the parish sought to fulfill its originally designated build out. He noted the importance of the proposed Fellowship Hall which would accommodate both parishioners' and community needs. He also pointed out that the Boy Scouts would utilize the hall. Pastor Becker concurred that the church's budget would be severely hampered if they were required to provide the trail.

Mr. Jerry Bender, 3443 Sleepy Hollow Road, an adjoining neighbor, stated that he supported the proposal if the 30 parking spaces were placed in another area and did not abut his property.

Chairman DiGiulian called for speakers who opposed the special permit and receiving no response, he closed the public hearing.

Mr. Pammel moved to approve SP 97-M-048 for the reasons set forth in the Resolution, subject to the Revised Development Conditions, with modifications, dated December 23, 1997, contained in the staff report dated December 16, 1997.

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

TRUSTEES OF THE SLEEPY HOLLOW UNITED METHODIST CHURCH, SP 97-M-048, Appl. Under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities and nursery school. Located at 3435 Sleepy Hollow Rd. on approx. 5.09 ac. of land zoned R-2. Mason District. Tax Map 60-2((33))1A. 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 23, 1997; and

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

1. The applicant is the owner of the land.
2. The provision of a trail would severely impact the 100-year old Beech tree, a natural resource.

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. 8-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3435 Sleepy Hollow Road, 5.09 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips Inc., dated July 30, 1997, as revised through December 9, 1997, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions.
5. Phase I shall consist of 235 seats in the main area of worship and 69 parking spaces and does not include any increase in the seating; Phase II shall not include additional seating capacity and shall provide 10 additional parking spaces (79 total); Phase III shall consist of 285 seats in the main area of worship, and a nursery school with a maximum daily enrollment of 99 children, and shall provide 22 additional parking spaces (101 total). At the completion of Phase III, the maximum number of seats in the main area of worship shall be 285, the maximum daily enrollment for the nursery school shall be 99, and a total of 128 parking spaces shall be provided within the parking areas as shown on the special permit plat. All parking shall be on-site.
6. The 30 parking spaces shown along the southern portion of the property adjacent to Parcels 60-2 ((1)) 50 and 60-2 ((23)) 23, may be constructed provided that the area adjacent to the parking spaces between the residential lots to the South is landscaped with additional evergreen plant materials to provide an additional landscape buffer.

7. The hours of operation for the nursery school shall be limited to 8:30 a.m. to 12:00 noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday.
8. Transitional Screening shall be provided along the north, east and south property boundaries, and shall be waived along the western property boundary. The barrier requirement along the western property boundary shall also be waived. Landscaping and Transitional Screening shall be provided with construction of the Phases shown on the approved special permit plat. Transitional Screening and barriers shall be provided as follows:

North

Proposed landscaping along the northern property boundary as shown on the approved plat, with existing vegetation along the northern property line, shall satisfy the requirements of Transitional Screening Type 1, supplemented with additional evergreen plant materials to provide screening of the church during the winter months, subject to the review and approval of the Urban Forestry Branch of DEM. The barrier requirement shall be waived.

East

Existing vegetation along the southern property line within the transitional screening yard shown on the special permit plat shall satisfy the requirements of Transitional Screening Type 1, supplemented with additional evergreen plant materials to provide screening of the church during the winter months, subject to the review and approval of the Urban Forestry Branch of DEM. The barrier requirement shall be waived.

South

Supplemental landscaping, subject to the review and approval of the Urban Forestry Branch of DEM, and existing vegetation shown on the special permit plat shall satisfy the requirements of Transitional Screening Type I. A four-foot high solid wood barrier fence shall be installed along the inside edge of the landscaped yards shown along the southern property boundary adjacent to Parcels 60-2((1))50 and 60-2((23))23, to screen glare from headlights to adjacent properties.

9. Limits of clearing and grading shall be as shown on the special permit plat, except for minor adjustments necessitated by final engineering required at the site plan phase and except that the limits of clearing and grading shall be adjusted so that they come to within 8 feet of the proposed construction of the fellowship hall, narthex and patio, shown on the approved special permit plat, subject to the review and approval of the Urban Forestry Branch of DEM. Prior to approval of a grading plan or site plan, a tree save plan for the site shall be submitted for review and implemented as approved by the Urban Forestry Branch of DEM. The plan shall identify, locate and preserve individual mature, large and or specimen trees, as shown on the special permit plat, to the greatest extent possible as determined by the Urban Forestry Branch of DEM. Emphasis shall be given to the European Beech tree located within the western portion of the application property. Subject to the approval of the Urban Forestry Branch/DEM, the applicant shall perform the following measures relating to tree preservation on the property:

Perform a pre-construction evaluation of the existing vegetation to determine the condition of the trees designated to be saved.

The trees designated to be saved shall be marked on the ground with a filter fabric fence or equivalent demarcation prior to clearing and grading and at all times during construction.

Signage affirming "restricted access" shall be provided on the temporary fence highly visible to construction personnel.

As a result of final engineering in the event the trees designated for preservation cannot be preserved, equivalent tree save areas or equivalent landscaped areas shall be substituted on the site as determined by DEM.

10. Right-of-way in front of the parsonage as shown on the Special Permit Plat not to exceed 40 feet from the existing centerline of Sleepy Hollow Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first.
11. The applicant shall stripe to provide a modified right turn lane as shown on the approved special permit plat with construction of Phase I. A second modified right turn lane shall be striped by the applicant to serve the southern entrance driveway with construction of Phase III improvements.
12. All signage on the property shall conform to the provisions of Article 12, Signs of the Zoning Ordinance.
13. The use of loudspeakers shall not be permitted outside the building.

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. Establishment of Phase 1 shall establish the uses 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. McPherson seconded the motion which carried by a vote of 4-0-1 with Mr. Dively abstaining; Mr. Ribble was not present for the vote; 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 January 7, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. SOHEE KIM, SP 97-M-047, Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit commercial recreation use. Located at 7356-B Little River Turnpike on approx. 1.67 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1((20))5.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Im, Esquire, Im & Associates, 7630 Little River Turnpike, Suite 301, Annandale, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated December 16, 1997. She stated that staff recommended approval.

Brian Im, Esquire, said that he was before the Board to obtain a special permit for a karaoke establishment because the County had no filing category for such a business license. He briefly explained what karaoke was and how their establishment would operate. He pointed out a spelling error in the Applicant's name. (The correction was made although the staff report reflects the incorrect spelling with two O's in Mr. Kim's first name.)

Chairman DiGiulian called for speakers either in support or opposition the special permit application request and receiving no response, closed the public hearing.

Mr. McPherson moved to approve SP 97-M-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions In Appendix 1 contained in the staff report dated December 16, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SOHEE KIM, SP 97-M-047, Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit commercial recreation use. Located at 7356-B Little River Turnpike on approx. 1.67 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 71-1((20))5. 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 23, 1997; and

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

1. The applicant is the contract purchaser/lessee of the land.
2. The request is very reasonable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). C-6, HC, SC of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7356-B Little River Turnpike (1.67 acres) and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Robert L. Sproles for Huntley, Nyce & Associates, Ltd., dated May 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 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 1:00 p.m.- 2:00 a.m., daily.
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 40 white pines, 30-40 feet high, shown on the Special Permit plat shall be preserved and maintained and shall satisfy the Transitional Screening requirement. The barrier requirement along the northern lot line shall be waived.

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

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

Mr. Hammack seconded the motion which carried by a unanimous vote of 5-0. Mr. Ribble was not present for the vote; 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 January 7, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-08, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, sales and ancillary uses to permit building additions, site modifications and change in development conditions. Located at 15950 Lee Highway on approx. 212.26 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1((1))1, 4, 13, 14, 15, 17 pt., 33A pt., 38 pt., 39 pt. and 64-1((4))7A.

Chairman DiGiulian called upon Susan Langdon, Chief, Special Permit and Variance Branch, for an explanation on this applicant's notices.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant's notices were not in order because the address on the application was incorrect. She stated that the application required a deferral so that it could be readvertised correctly and that staff suggested a date of February 24, 1998 at 9:00 a.m. which was acceptable to the agent, Mr. Royce Spence.

Chairman DiGiulian asked if there was anyone present who wished to speak to the issue of this case's deferral and receiving no response, he called for a motion to defer.

Mr. Hammack moved to defer SPA 81-S-064-8 to February 24, 1998 at 9:00 a.m. The motion was seconded by Mr. Dively and carried unanimously by a vote of 5-0 with Mr. Ribble not present for the vote;

Page _____, December 23, 1997, Tape 1, LUCK STONE CORPORATION, SPA 81-S-064-08, continued from page

Mr. Kelley was absent from the meeting.

Mr. Pammel, addressed Mr. Spence, agent for the applicant, and requested that when the applicant comes before the Board of Zoning Appeals at the February 24th public hearing, they are prepared to address issues raised in the staff report regarding documentation of the picnic area and the concern about turbid water within the pond and discharge water.

Mr. Spence affirmed that that was their intention.

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Page _____, December 23, 1997, (Tape 1), Scheduled case of:

9:00 A.M. KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, SPA 76-A-230-2, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-A-230 for church and related facilities to permit change of permittee and change in development conditions. Located at 9524 Braddock Rd. on approx. 4.84 ac. of land zoned R-1. Braddock District. Tax Map 69-3((1))21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. H. Kendrick Sanders, Esquire, 3905 Railroad Avenue, Suite 200N, Fairfax, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented staff's position as contained in the staff report dated October 28, 1997. She called the Board's attention to the Addendum dated December 16, 1997, in Appendix I, outlining the applicant's additional request to change the hours of operation. Ms. Langdon stated that staff usually does not recommend hours of operation for churches and, therefore, revised the proposed development conditions to delete the reference of the hours of operation.

H. Kendrick Sanders, Esquire, briefly explained the site entrance and submitted that Condition #10 be deleted. He concurred with the other conditions.

Chairman DiGiulian called for speakers either in support or in opposition to the Special Permit Amendment.

Mr. William Bartlett, Jr., 4724 Picket Road, Fairfax, questioned the church's hours and days of operation as they differed from that noted on the original application and those stipulated on the October 8, 1997 Revised Supplemental Information submitted by the agent, Mr. Sanders. He voiced his concern over a 7-day a week operation. Two other issues of concern, he pointed out, were traffic conditions on the quiet, residential streets exacerbated by church patrons and whether the original modification of the screening and barrier requirements were met by the applicant.

In rebuttal, Mr. Sanders pointed out that the intensity of the use was reduced because there would be no school. He voiced his dismay regarding Mr. Bartlett's concern about the church's hours of operation as the very nature of a church's activities should not have a detrimental impact on the community except, perhaps, those few occasions when there may be an exceptional event attracting a large gathering. Mr. Sanders stated that there were different opinions about the road as indicated by residents during several citizen meetings. He emphasized that the original church had grown and required a larger facility, but that with the proposed change in permittee, there would be less of an impact on the community. Mr. Sanders stated that the landscape concern posed by Mr. Bartlett was addressed through the applicant's development conditions.

Susan Langdon responded to Mr. Dively's question concerning the site's entrance as stipulated in Condition #10.

There being no further questions or comments by the Board members, Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SPA 76-A-230-2 for the reasons set forth in the Resolution, subject to the

Proposed Development Conditions contained in the staff report dated October 28, 1998.

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

KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, SPA 76-A-230-2, Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-A-230 for church and related facilities to permit change of permittee and change in development conditions. Located at 9524 Braddock Rd. on approx. 4.84 ac. of land zoned R-1. Braddock District. Tax Map 69-3((1))21. 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 23, 1997; and

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

1. The applicant will purchase the subject property in the near future.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). R-1; Sect. 8-006 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9526 Braddock Road, and is not transferable to other land.*
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William G. Hawes dated July 1, 1997, revised July 15, 1997, 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 number of seats in the sanctuaries shall be 200 seats in Building A and 524 in Building B for a total maximum number of seats on site of 724.
5. One hundred eighty-seven (187) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.*
6. Transitional screening and barrier requirements shall be modified to allow the existing vegetation and board fence as depicted on the special permit plat to meet screening and barrier requirements. Any dead or dying plant material shall be replaced with like material a minimum of six feet in height. The board fences shall be maintained in good repair.*
7. Any lighting on site shall be in accordance with the following:

- ▶ 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.
8. The existing stormwater management pond shall be regularly cleaned of sediment and trash so that it remains functional and meets the required stormwater management/best management practices criteria for the site.
 9. A sign permit shall be obtained for any proposed sign for this site.
 10. The entrance shall be only from Braddock Road (no exit).*

These development conditions incorporate and supersede all previous development conditions. Previously approved conditions, including minor modifications to those conditions, are designated by 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 Fairfax Baptist Temple, Related Facilities and Private School of General Education has vacated the site and a Non-Residential Use Permit for the Korean Presbyterian Church of Washington has been issued. The Non-Residential Use Permit for the Korean Presbyterian Church of Washington may not be obtained until such time as the Fairfax Baptist Temple has vacated the site. The Board of Zoning Appeals may grant additional time to establish the use if a written request for addition 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 unanimous vote of 5-0. Mr. Ribble was not present for the vote; 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 January 7, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page _____, December 23, 1997, (Tape 1), Action Item:

Approval of October 28, 1997 Minutes

There being no objections, Mr. Pammel moved to approve the October 28, 1997 Minutes. The motion was seconded by Mr. McPherson and carried unanimously by a 5-0 vote with Mr. Ribble not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Consideration of Acceptance for Appeal
filed by Joseph C. Blue & Joyce A. Blue, Appeal A 1997-DR-038

William Shoup, Deputy Zoning Administrator, presented staff's position that the appeal was not timely filed as set forth in the memorandum dated December 15, 1997. He explained that, although he had indicated to the Board at the November 4, 1997 meeting, that staff's determination presented that day, was appealable,

Page _____, December 23, 1997, Tape 1, After Agenda Item, continued from page

after reconsidering the circumstances, it is staff's position that the determination offered on November 4th, that the structure was a free-standing structure, was no different than the original determination made in the Notice of Violation issued December 6, 1996. Mr. Shoup clarified that the determination offered on November 4th was not a new determination and, therefore, this appeal was not timely filed since it was not filed within 30 days of the Notice of Violation. Mr. Shoup stated that staff recommended that the Board not accept the appeal application for hearing.

William M. Baskin, Jr., Esquire, agent for the appellants, maintained that the appellants' position was that they were aggrieved by the Zoning Administrator's interpretation dated November 4, 1997, therefore, November 4th was the date from which the 30-day filing time was calculated. Mr. Baskin submitted that, even if it was determined that the item at issue constituted a wall, that determination would offer no remedy for the Blues as they must then file for a special permit to allow the structure to remain.

Mr. McPherson commented that there was an apparent inconsistency with staff's position pointing out that in the November 4, 1997 memorandum, staff's determination was that the low brick wall did not constitute an integral attachment to the main dwelling and now, staff was stating that that was not their determination. He then moved to accept the appeal as proper and hear it within the normal course of business.

Messieurs Dively and Hammack seconded the motion which carried by a unanimous vote of 5-0 with Mr. Ribble not present for the vote; Mr. Kelley was absent from the meeting.

Staff recommended the morning of March 24, 1998 to hear the appeal. This date was acceptable to the appellants.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Request for Additional Time to Commence Construction for VC 95-P-023
Victor Montes

There being no objection, Mr. McPherson moved to allow additional time to the morning of May 31, 1998. The motion was seconded by Mr. Hammack and carried unanimously by a 5-0 vote with Mr. Ribble not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Request for Additional Time to Commence Construction for SP 95-Y-012
Pure Presbyterian Church of Washington

Mr. McPherson moved to allow additional time to December 7, 1999. The motion was seconded by Mr. Hammack and carried by a vote of 5-0. Mr. Ribble was not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Request for Additional Time to Commence Construction for VC 91-D-092
Mark Baker

Commenting that there should be some reasonable time period set, Mr. McPherson said that he would reluctantly move to extend the time period to November 15, 1998. The motion was seconded by Mr. Dively and carried by a 4-0-1 vote with Mr. Hammack abstaining. Mr. Ribble was not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Out-of-Turn Hearing Request for Gabriel E. Nassar, Jr., & Ann P. Gamber, VCA 96-M-023

After being informed by staff that the public hearing for this variance was scheduled for February 24, 1998, Mr. Dively moved to deny the out-of-turn hearing request. The motion was seconded by Mr. McPherson and carried by a vote of 5-0 with Mr. Ribble not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____ December 23, 1997, (Tape 2), Action Item:

Out-of-Turn Hearing Request for Monte Asbury, SPA 95-M-011

Commenting that the applicant's deadline could not be met since the public hearing was scheduled for January 1, 1998, Mr. Dively moved to deny the out-of-turn hearing request for SPA 95-M-011. Mr. McPherson seconded the motion which carried by a 5-0 vote with Mr. Ribble not present for the vote; Mr. Kelley was absent from the meeting.

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Page _____, December 23, 1997, (Tape 2), Action Item:

Approval of December 16, 1997 Resolutions

Mr. Pammel moved to approve the December 16, 1997 Resolutions which was seconded by Mr. Dively and carried by a vote of 5-0. Mr. Ribble was not present for the vote; 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 10:47 a.m.

Minutes by: Paula McFarland

Approved on: July 7, 1998

Susan Langdon, Chief,
Special Permit & Variance Branch/BZA

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 6, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Timothy McPherson; James Pammel; and, John Ribble. Robert Kelley was not present for the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m.

The first order of business was to elect a new Chairman and two Vice Chairmen. Mr. Ribble moved to nominate John DiGiulian as Chairman. The motion was seconded by Mr. Pammel. The motion carried by a vote of 6-0.

Mr. Pammel moved to nominate Mr. Hammack and Mr. Ribble as the two Co-Vice Chairmen. The motion was seconded by Mr. McPherson. The motion carried by a vote of 6-0.

Chairman DiGiulian called for the first scheduled case.

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Page 195, January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CORNWELL FARM L.L.C., SP 97-D-040, Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit riding and boarding stable. Located at 9414 Georgetown Pi. on approx. 9.41 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))58A pt. and 58B pt. (Reconsideration granted 11/11/97)

Chairman DiGiulian stated that there was a request to defer this case until January 27, 1998. Susan Langdon, Chief, Special Permit and Variance Branch, verified that the requested date was January 27, 1998.

There were no speakers to speak to the question of deferral.

Mr. Ribble moved to defer SP 97-D-040 until January 27, 1998, at 9:00 a.m. The motion was seconded by Mr. Hammack. The motion carried by a vote of 6-0

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Page 195, January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. FRANK H. & ELIZABETH S. PRUITT, VC 97-D-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from side lot line and chimney 11.2 ft. from side lot line. Located at 1707 Forest Ln. on approx. 12,745 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4((9))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. Todd Ray, Architect, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested approval of variances to permit an addition to be located 13.2 feet from the side lot line and a chimney to be located 11.2 feet from the side lot line. Variances of 1.8 feet and 0.8 feet respectively were requested.

Todd Ray, Architect, stated that the applicant was seeking a variance for an addition to the property which would be extended in the same plane, which would maintain a consistent setback from the property line.

There were no speakers either in support of or in opposition to the application.

Mr. Hammack made a motion to grant VC 97-D-098 for reasons noted in the Resolution.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK H. & ELIZABETH S. PRUITT, VC 97-D-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from side lot line and chimney 11.2 ft. from side lot line. Located at 1707 Forest Ln. on approx. 12,745 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4((9))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 January 6, 1998; and

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

1. The applicant has satisfied the nine required standards for variance applications, in particular, they are extending the existing building back and it will not create any different setbacks than that which exists already in the previously, lawfully constructed building.
2. The variance requests are minimal and have no impact on the neighborhood.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following Page _

limitations:

1. This variance is approved for the location of a room addition and chimney shown on the plat prepared by John K. Burke, dated October 7, 1997, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 107, January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ALAN M. LADWIG, VC 97-M-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition and deck 10.6 ft. from side lot line. Located at 6108 Beachway Dr. on approx. 22,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1((11))890.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alan M. Ladwig, 6108 Beachway Drive, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit a room addition which would be an enclosure of an existing screen porch and a 9 foot high deck to be located 10.6 feet from a side lot line. A variance of 4.4 feet was requested. The screen porch is presently located 10.6 feet from the side lot line. Staff requested that if the Board denied the application, the applicant would need to verify for the County that the screen porch was legally established. If the applicant is unable to do so, he would need to apply for a special permit for a reduction to the minimum yard requirements based on an error in building location to permit the screen porch to remain 10.6 feet from a side lot line.

Mr. Ladwig, stated that what he proposed was not an addition on the side of the yard. The existing boundary of the house would not change. The roof line would not change and it would improve the looks of the house. He stated that the patio does not extend beyond the current boundary; it goes in back of the house and provides an opportunity to take advantage of the lake view.

Mr. Hammack asked how long he had owned the house and whether the deck existed when the house was purchased. Mr. Ladwig replied that he had owned the house since October 1997, and that the porch already existed.

Mr. Pammel wanted to know what type of hardship would occur if the variance was not approved and whether or not the topography was more favorable on the side of the house he planned build on as opposed to another location. Mr. Ladwig stated that he would have to research what the zoning requirements were at the time and why the porch was allowed to be added to the house at the time of the original construction. Mr. Ladwig stated that there was minimal area to add on in the back because of a

steep dropoff.

There were no speakers either in support of or in opposition to the application.

Mr. Pammel made a motion to grant VC 97-M-100 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALAN M. LADWIG, VC 97-M-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition and deck 10.6 ft. from side lot line. Located at 6108 Beachway Dr. on approx. 22,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1((11))890. 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 6, 1998; and

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

1. The applicant meets the prescribed requirements for a variance, specifically the fact that the existing screen porch is 10.6 feet from the side property line and there will be no further encroachment into the side yard.
2. The variance request is minimal and the applicant has stated that the topography is very steep to the rear of the house as well as in a western direction.
3. It is the only logical location for such an extension to 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:

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

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

1. This variance is approved for the location of a room addition (enclosed screen porch) and a deck shown on the plat prepared by Hamid Moghave Mi-Tehrani, dated September 3, 1997, revised October 15, 1997, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 199, January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN JON STEPKO, VC 97-V-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side and rear lot lines. Located at 3905 Westgate Dr. on approx. 21,584 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2((10))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. Kevin Jon Stepko, 3905 Westgate Drive, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit a detached garage to be located 8 feet from the rear lot line and 8 feet from a side lot line. The height of the proposed structure is 12 feet and a minimum side yard of 15 feet is required in the R-2 district, therefore a variance of 4 feet from the rear lot line and 7 feet from the side lot line is being requested. Staff noted an omission from the Staff Report that Variance V-455-666 was denied on December 6, 1966 for the subject property to permit construction of a swimming pool 5 feet from a side lot line.

Kevin Jon Stepko, applicant, stated that he purchased his property in 1991 in good faith foreseeing no requirements for improvement, but that the need had arisen to convert his existing attached garage into living space. He stated that in order to retain the value of his property, he would like to provide parking and storage in the requested location. Mr. Stepko stated that the shape of the lot, the location of the existing

dwelling, and the fact that it is a corner lot limits the placement of the detached structure.

Mr. Hammack wanted to know why the garage could not be attached to the existing garage, extending that wing and effectively constructing the bulk of the building closer to Chickawane Court. Mr. Ladwig replied that a garage there would require a variance also and that it would touch the 15 foot side line if he extended in that direction. He stated that it would give very little space for turn around into the garage.

Mr. Ladwig submitted a letter of support from his neighbor who lives on Lot 47.

Mr. Hammack informed Mr. Ladwig that there were letters of opposition that were submitted to the Board and wanted to know if he had been given copies. Mr. Ladwig stated that he knew that there was opposition to his application.

Robert Homiac, 9102 Volunteer Drive, Alexandria, Lot 23, spoke in opposition to the application. He stated that the Ordinance did not provide protection for him. Mr. Homiac stated that Mr. Stepko is being permitted to build 12 feet from his property line. He stated that because the two properties are not level, Mr. Stepko's property being 6 feet higher in elevation than their's, with the garage having a height of 18 feet, that from their vantage point, the 18 foot high garage would have a negative impact.

Mr. Homiac stated that he felt that Mr. Stepko did not give adequate notice to property owners surrounding his property as to the nature of the addition that he proposed. He stated that the plats submitted by Mr. Stepko misidentifies the yard requirements and that an erroneous setback was noted on the plat which gave a misleading impression that Mr. Stepko's ability to build in his backyard was limited. Mr. Homiac felt that misleading and inaccurate information provided by Mr. Stepko should be grounds for denying his application.

Mr. Ribble asked Mr. Homiac to explain the inconsistencies he pointed out on the plat and asked staff if all abutting property owners were notified of Mr. Stepko's proposed addition. Staff replied that all notices were in order. Mr. Homiac explained that the rear of Mr. Stepko's property abuts his property and that the dotted line on the plat signified a 15 foot setback which should have been applicable to the side yard and not the rear yard. Staff also stated that when looking along the driveway, the dotted line is 25 feet back from the property line suggesting that it was the rear of the property. Mr. Homiac stated that that was incorrect. Staff responded by stating that it appeared to be the case as far as the way the dotted line appears on the plat. The plat did not identify what the front, side and rear setbacks were.

Mr. Pammel stated that the Ordinance defined corner lots as two side yards and a front yard and agreed that the plat was incorrect on the south boundary, that it should be a 15 foot setback. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Ordinance identifies, on a corner lot, a rear yard as opposite the shortest front yard and that as shown, the shortest front yard was along Chickawane Court. The eastern lot line takes the rear yard setback. Because it is an accessory structure, the rear yard setback would be from an addition. The Ordinance allows an accessory structure to be located the distance of the height of the structure from the rear lot line which makes the setback 15 feet. An accessory structure must be 15 feet from the side lot line on an R-2 zoned lot.

Mr. Homiac stated that his main points were: that when looking at the dotted lines, it was misleading as to what setbacks were; that the structure would have an adverse impact on their property; that there was inadequate notice to the property owners; that the variance failed to meet the applicable standards as set forth in the Code and by the Supreme Court of Virginia and the Circuit courts of Virginia; that his application was inconsistent with the character of the neighborhood and that Mr. Stepko failed to show that there was no other location on his property where the structure could be built.

Mr. Stepko in his rebuttal stated that he was told by his surveyor what the setbacks were. He stated that the neighbors, through the Homiac's, were given notification about the setback requirements.

Mr. McPherson wanted to know what the other alternative sites were that Mr. Stepko considered. Mr. Stepko addressed four other alternatives.

Mr. Ribble made a motion to deny VC 97-V-102 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN JON STEPKO, VC 97-V-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side and rear lot lines. Located at 3905 Westgate Dr. on approx. 21,584 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2((10))46. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 1998; and

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

1. The accessory structure would have a negative impact on the neighbors because of the elevation difference.
2. The applicant has not satisfied the standards required for a variance.

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

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

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

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

Page 202 January 6, 1998, (Tape 1), KEVIN JON STEPKO, VC 97-V-102, continued from Page 201

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

Mr. McPherson seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 1998.

Page 200 January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DONALD & CAROL FRETWELL, VC 97-Y-105 Appl. under Sect(s). 18-401 and 10-104 of the Zoning Ordinance to permit construction of accessory structure 13.9 ft. from front lot line in a minimum required front yard on a lot containing less than 36,000 sq. ft. Located at 13518 Oak Ivy Ln. on approx. 13,812 sq. ft. of land zoned R-2 and WS. Sully District. Tax Map 35-3((10))127.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald Fretwell, 135108 Oak Ivy Lane, Fairfax, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a swimming pool 13.9 feet from a front lot line in a minimum required front yard of a lot containing 13,812 square feet. The Zoning Ordinance states that no accessory structure or use shall be located in any minimum required front yard on any lot or in any front yard on a lot containing 36,000 square feet or less.

Donald Fretwell, the applicant, stated that his lot was purchased in 1985. The lot had the potential of providing privacy if a swimming pool was constructed. There is a community center which has a pool located behind the property. The neighbors on one side have a pool in their backyard and there is adequate distance between the two properties on the other side which would allow for private use of the pool. Mr. Fretwell stated that he planted a natural barrier between his property and the road to give more privacy. He stated that the Ordinance does not allow for the reasonable and enjoyable use of the property.

Mr. Dively stated that according to the Ordinance, the applicant did not have a back yard. Mr. DiGiulian asked if the applicant could use the rear portion of the lot for access to the public street. Staff replied that the rear yard did not have access off the public street.

There were no speakers either in support of or in opposition to the application

Mr. Dively made a motion to grant VC 97-Y-105 for reasons noted in the Resolution.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD & CAROL FRETWELL, VC 97-Y-105 Appl. under Sect(s). 18-401 and 10-104 of the Zoning Ordinance to permit construction of accessory structure 13.9 ft. from front lot line in a minimum required front yard on a lot containing less than 36,000 sq. ft. Located at 13518 Oak Ivy Ln. on approx. 13,812 sq. ft. of land zoned R-2 and WS. Sully District. Tax Map 35-3((10))127. 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 6, 1998; and

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

- 1. There is an extraordinary situation/condition on the property in that the property has two front yards.

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

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

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

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

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

- 1. This variance is approved for the location of a swimming pool shown on the plat prepared by Edward W. Dove, dated April 24, 1997, revised through October 22, 1997, 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. Hammack seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 14, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 204, January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES F. & CYNTHIA STEELE VANCE, VC 97-D-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.0 ft. and eave 0.0 ft. from side lot line. Located at 1009 Crest Ln. on approx. 40,493 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-4((5))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. Brian McCarthy, Architect/Agent, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested two variances to construct a garage addition. The first variance was to locate the garage 1 foot from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 District, therefore, a variance of 19 feet was requested. The second variance was to allow the eave of the garage to be located on the side lot line. The Zoning Ordinance requires a minimum side yard of 17 feet for eaves in the R-1 District, therefore, a variance of 17 feet was requested.

Mr. Pammel wanted to know if the National Park Service was notified. Staff replied that they were notified and no comment was received.

Brian McCarthy, Architect/Agent, stated that the applicants acquired the property in June 1995. They have four vehicles and have the need for additional parking space in a garage under cover. The hardship is the severe topography which caused the original developer to locate the dwelling well back on the property. The garage is proposed adjacent to the park land. There are two easements at the front end of the property, one for storm drainage and one for ingress/egress. They decided that the best place to locate the garage was remote from the neighbors and adjacent to the unused public space. The garage would not be seen from the parkway. The topography is so severe that there is a retaining wall along the back of the property. The wall is about 13 feet high.

Mr. McCarthy read into the record a letter of support from a Ms. Foster.

Mr. McPherson questioned Mr. McCarthy about the severe topography asking whether the neighboring properties were similarly situated. Mr. McCarthy said that in general they were.

There were no speakers either in support of or in opposition to the application.

Mr. Hammack moved to deny the application stating that the addition was too close to the property line. He stated that there were situations that would justify a variance to some extent, the topographic conditions and the right-of-way and easement across the front of the property, but that he could not make a motion that would require an owner to go on public property to maintain their proposed addition. Mr. McPherson seconded the motion. Mr. Pammel stated that he supported his colleagues' points, that there was not any situation where the Board should grant variances that would require the applicants to their proposed structures on someone else's property.

Mr. Pammel stated that Mr. Vance could probably do some relocating of the structure so that the variance request would be reduced, about 4 feet so that the application would have a better chance of meeting the requirements.

Mr. Ribble asked if Mr. Pammel was suggesting that the Board grant the application in part. Mr. Pammel replied that if the applicant were willing to do a relocation, and resubmit a plat showing a greater side yard

setback, that he would be receptive to approving a modification. Mr. McCarthy wanted to know if the Board was suggesting that it could be determined today or did they need to reapply and present it again. Mr. Pammel stated that they would have to submit new plats but that decision could be deferred for a period of one month. Mr. McCarthy stated that they wanted to do that and wanted to know if 4 feet was reasonable. Mr. Pammel stated that the applicant had to have at least 4 feet to do maintenance.

Mr. DiGiulian stated that if Mr. Pammel was making a substitute motion, that he would reserve his vote until the plat is submitted. Mr. Pammel moved to defer decision to allow the applicant to present an alternative to the Board. Mr. Ribble seconded the motion. Mr. Hammack withdrew his motion. Mr. Pammel's motion carried by a vote of 6-0.

The application was deferred until February 10, 1998, at 9:00 a.m.

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Page 205 January 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. VIRGINIA JAHELKA, SP 97-P-052 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home professional office. Located at 2845 Cedarest Rd. on approx. 38,205 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3((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. Virginia Jahelka, 2845 Cedarest Road, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit a home professional office, specifically, health services, to occupy 600 square feet of the existing dwelling. The applicant proposed 15 customers per week with no more than two customers at any one time. The proposed hours of operation would be 10:00 a.m. to 3:00 p.m., Tuesday, Thursday and Friday. The applicant would be the sole employee. The proposed use is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance Provisions. Staff recommended that the application be approved subject to the proposed Development Conditions dated December 30, 1997.

Mr. Dively asked if the Development Conditions stated that there would only be one client at a time. Staff replied that that was correct.

Virginia Jahelka, applicant, stated that she had been in private practice for 11 to 12 years. She stated that she has two small children that she would like to spend more time with them and if she moved her practice to her home, she would be available to her children and would be able to work also.

There were no speakers either in support of or in opposition to the application.

Mr. Pammel made a motion to grant SP 97-P-052 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA JAHELKA, SP 97-P-052 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home professional office. Located at 2845 Cedarest Rd. on approx. 38,205 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3((1))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 January 6, 1998; and

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

1. The property contains 38,205 square feet.

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

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

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

If it is the intent of the Board of Zoning Appeals to approve SP 97-P-052 located at Tax Map 49-3((1)) 1 to allow a home professional office pursuant to Sect. 3-103 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2845 Cedarest Road (38,205 square feet), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Rice Associates, dated July 14, 1997, revised through August 26, 1997, 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 area dedicated to the home professional office shall not exceed 600 square feet.
6. There shall be no more than one client at a time and no more than 15 clients per week.
7. The hours of operation shall be limited to 10:00 a.m. to 3:00 p.m., Tuesday, Thursday and Friday.
8. The applicant shall be the only employee.
9. The two parking spaces in the gravel driveway shall be reserved for clients. All parking shall be on site.
10. There shall be no signs associated with this use.
11. This special permit for a home professional office is approved for a period of five (5) years from the final date of approval of this special permit.

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

Page 201, January 6, 1998, (Tape 1), VIRGINIA JAHELKA, SP 97-P-052, continued from Page 200

responsible for obtaining the required Non-Residential Use Permit (Non-RUP) through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. 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 January 14, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 201, January 6, 1998, (Tape 1), Action Item:

Consideration of Acceptance for Appeal Filed by
Tom V. & Joan J. Richardson d/b/a Bull Run Stables

William Shoup, Deputy Zoning Administrator, asked the Board to defer consideration of the acceptance issue on the appeal until January 27, 1998. Staff needed additional time to consult with the County Attorney on the legal issues pertaining to the requirement for road dedication which is the subject of the appeal. Mr. Randall Minchew, attorney for the appellant, concurred with the request.

Mr. Hammack moved to defer consideration of acceptance until January 27, 1998. The motion was seconded by Mr. Pammel.

Mr. DiGiulian stated that he was familiar with the property and that if there were ever a case where there was no nexus for the requirement for the dedication, this case would be the one. He stated that he would have a difficult time supporting it.

The motion was carried by a unanimous vote.

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Page 204, January 6, 1998, (Tape 1), Action Item:

Approval of September 30, 1997, Minutes

Mr. Pammel moved to approve the September 30, 1997, Minutes. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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Page 201, January 6, 1998, (Tape 1), Action Item:

Approval of December 23, 1997, Resolutions

Mr. Pammel made a motion to approve the December 23, 1997, Resolution. Mr. Dively seconded the motion which carried by a vote of 6-0.

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Mr. Pammel asked that the Board go back to the September 30, 1997, Minutes. He stated that he had one correction to make. On page 28, beginning in the second paragraph, third line, a comma was omitted. It

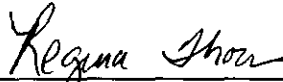
should read, "He said the structures draw attention to the appellant's business, he believes that they fall under..." delete the word, "and" and add, "that".

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As there was no other business to come before the Board, the meeting was adjourned at 10:11 a.m.

Minutes by: Denise Snyder, Deputy Clerk

Approved on:



Regina Thorn, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 13, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Timothy McPherson; James Pammel; and, John Ribble. Mr. Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:08 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 ~~208~~ 209, January 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. KINGSTOWNE E & F L.P., SPA 95-L-072 Appl. under Sect(s). 5-403 of the Zoning Ordinance to amend SP 95-L-072 for health club to permit an increase in floor area. Located at 5825 Barclay Dr. on approx. 7.94 ac. of land zoned I-4. Lee District. Tax Map 91-2((1))31. (Moved from 10/7/97)

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, stated that a deferral had been requested. The suggested date was February 10, 1998, at 9:00 a.m. A portion of the applicant's request, which was for an increase in occupancy, was not advertised. Therefore, the deferral was requested so that the applicant could include this increase.

Mr. McPherson made a motion to defer until February 10, 1998, at 9:00 a.m. Mr. Dively 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.

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Page ~~208~~ 209, January 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM O. BUTLER, III, VC 97-B-103 Appl. under Sect. 18-401 of the Zoning Ordinance to permit construction of carport 3.81 ft. from side lot line. Located at 9524 Barnstable Court on approx. 10,070 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 78-1((4))461.

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 Butler, 9524 Barnstable Court, Burke, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to allow construction of a carport addition 3.81 feet from the side lot line. The side yards would total 10.31 feet. A variance of 1.19 feet from the side yard requirement and 6.69 feet from the total side yard requirement was requested.

Mr. William Butler stated that the only change to the variance he requested last year was a request for a variance of 3 feet. He stated that at the time the Board asked him if he would consider a 1.0 foot variance, but he could not agree to the 1.0 foot variance because he had not planned well when he appeared. Mr. Butler stated that he was asking for a variance of 3.81, but instead, would like to ask the Board for a 3.0 foot variance.

There were no speakers in support or opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 97-B-103 for the reasons stated in the Resolution subject to the Development Conditions in Appendix 1 of the staff report dated January 6, 1998. Mr. McPherson 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.

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

WILLIAM O. BUTLER, III, VC 97-B-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit Pa

construction of carport 3.81 ft. from side lot line. Located at 9524 Barnstable Court on approx. 10,070 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 78-1((4))461. 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 13, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the standards required for a variance.
- 3. An extraordinary situation exists on the property.
- 4. The position of the building on the lot is at an angle.
- 5. Only a small portion of this 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a carport addition shown on the plat prepared by John W. Veatch, dated January 24, 1997, revised through October 9, 1997, 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. McPherson 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 January 21, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOE M. & ANNETTE R. TYLER, VC 97-V-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.5 ft. from side lot line. Located at 1102 Croton Dr. on approx. 10,750 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((5))(8)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. Joe M. Tyler, 1102 Croton Drive, Alexandria, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit a carport to be located 3.5 feet from the side lot line. A variance of 3.5 feet was being requested.

Mr. Ribble stated that the applicant already submitted a written justification which was contained in the staff report. Mr. Tyler stated that he wanted to use his written statement as his justification. He also stated that he needed all the maneuvering room possible for wheelchair access and for his van. He requested that the Board approve all space as requested.

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

Mr. Ribble made a motion to approve VC 97-V-104 subject to the Development Conditions contained in Appendix 1 of the staff report dated January 21, 1998. 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.

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

JOE M. & ANNETTE R. TYLER, VC 97-V-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.5 ft. from side lot line. Located at 1102 Croton Dr. on approx. 10,750 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((5))(8)18. 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 13, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the standards required for a variance
- 3. The placement of the house was built close to the side lot line.

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

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

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

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

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

- 1. This variance is approved for the location of a carport shown on the plat prepared by Kenneth W. White, dated September 9, 1997, 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. 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 January 21, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 213 February 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PUBLIC COUNTRY CLUBS, INC. & TIMOTHY P. KAMPA, SP 97-L-051 Appl. under Sect. 3-103 of the Zoning Ordinance to permit golf driving range. Located at South Van Dorn St. on approx. 11.0 ac. of land zoned R-1. Lee District. Tax Map 81-4((1))56 pt., 54 pt., and 55 pt. (Concurrent with PCA C-448-16, FDP C-448-31, SE 97-L-059 and SE 97-L-050). (Moved from 12/16/97)

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, Walsh, Collucci & Stackhouse, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Peter Braham, Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as outlined in the staff report. The application involved an 11 acre portion of a proposed 17.5 acre golf center which included a golf driving range with 75 tees, a two-story structure and related facilities, a putting course which had been deemed to be a miniature golf course and an eating establishment. The facilities related to the golf driving range included a snack shop, a pro shop, a club house, and a tipping area. The proposed golf center was located on the east side of south Van Dorn Street approximately 400 feet south of Castle Wellen Drive.

The application properties extend south to the area opposite the existing shopping center. The entrance to the proposed golf center would be opposite the existing entrance to the shopping center. The 11 acres subject to the special permit is zoned

R-1 and contains only facilities related to the golf driving range. The remainder of the proposed golf center is zoned PDH-4 and included the other facilities. The approval of that portion was granted by the Board of Supervisors (BOS) on January 12, 1998, with the approval of a proffer condition amendment PCA C-448-16 and a final development plan previously approved by the Planning Commission (PC), FDP C 448-31. The PDH portion of the property was located within Kingstowne. There were two special exceptions associated with the package. They were approved by the BOS on January 12, 1998. Staff recommended approval of SP 97-L-051 subject to the development conditions contained in Appendix 3 of the Staff Report dated November 6, 1997.

Keith Martin, agent for the applicant, stated that the Planning Commission (PC) had already approved the final development plan portion in the PDH district of half of the driving range area. On January 12, 1998, the BOS unanimously approved the proffer condition amendment application related to the driving range. He stated that the proposal was for a family entertainment center which would be centered around golf and would include activities for groups ranging from juniors, adults and seniors. Lessons would be provided ranging from swing instruction to rules of etiquette by Professional Golfing Association (PGA) professionals. The center was to be built in response to popularity of the sport of golf. The facility, which was within walking distance of Edison High School, would enable students to practice at no charge. Edison High School wrote a letter in support of the application.

The facility would consist of 75 hitting stations, 40 to be enclosed and climate controlled for year-round use,

with a 500 square foot training facility, club house, restaurant and a 36 hole putting course. The PC requested that the hours of operation for the driving range be reduced to 9:30 p.m. on weekdays. The facility would have no pole mounted lights but instead, the applicant would install lighting that would be sensitive to the surrounding community. The lighting installed would eliminate off-site glare. A 100 foot tree buffer would be provided along the eastern boundary of the driving range contiguous to the residential neighborhood and the church parking lot. A landscape berm would also be provided along the entire South Van Dorn frontage on the western boundary. The northern boundary would also have a treed buffer. There would be no visual impact on either South Van Dorn Street or the adjacent neighborhood.

The Staff, BOS, PC, Kingstowne Residential Owner's Corporation, and the Lee District Land Use Advisory Committee, all recommended approval of the special permit according to Mr. Martin. All issues, which included compliance with the Comprehensive Plan's transportation plan for the widening of South Van Dorn Street and the issue regarding bunker lights, had been resolved.

Mr. Martin stated that he wrote a letter to the Board concerning the standard Development Condition 1 which grants the special permit to the applicant only. He stated that the applicant was the owner of the property but would also be taking on investors. Mr. Martin suggested a change in Development Condition 1 to avoid the need for a special permit amendment which would state that this approval was granted to the applicant or an entity in which the applicant had an ownership interest.

Development Condition 6 requested that the applicant provide a 100 foot buffer along the entire eastern boundary but that it be carried down to the storm water management pond and the parking area. The applicant felt this would be unnecessary because the southeastern boundary was contiguous to a proposed open space area within Kingstowne that would be associated with a multi-family development. Mr. Martin felt that it would be an overkill to continue the 100 foot buffer next to future buffer. He stated that it could result in loss of parking spaces. He asked that the Board delete Condition 6.

Mr. Pammel stated that Mr. Martin claimed that the landscape buffer would screen the lighting, but that Mr. Martin did not address the period of time from November through March when there are no leaves. Mr. Martin stated that the hours of operation had been reduced to a minimum which addressed that issue. He also stated that the residents in the area were very much in support of the proposal. Mr. Pammel asked a question regarding the letter submitted by the applicant in reference to ownership. He wanted to know if the applicant would object to changing the word to "majority ownership interest" as opposed to "ownership interest." Mr. Martin stated that the applicant had no objection.

Mr. McPherson wanted to know what was staff's position on the approval or disapproval of what Mr. Pammel suggested. Staff stated that with the BOS's approval, the previous day, of the eating establishment and the acceptance of the proffer with regard to reservation of right of way, staff would recommend approval of the application. Mr. McPherson questioned Mr. Martin regarding ownership versus whatever entity would end up controlling the development. Mr. McPherson wanted to know whether both elements would be represented as being retained by the applicant in the new entity. Mr. Martin replied that they would.

Mr. Hammack asked staff to comment on the applicant's proposal to delete Development Condition 6. Staff stated that the area was a land bay identified for a development with a high-rise, multi-family residential dwelling. Staff further stated that a 100 foot buffer would be more appropriate along that boundary given the residential use that would occur. Staff stated that this use would be required to provide the buffering because the adjacent use would be a less intense use.

Mr. Dively asked what was the number of feet that the building would have to be back from the lot line. Staff stated that the PDH district did not have a set standard. There would only be a reduction in the conceptual development plan which showed a green buffer occurring along that boundary. Staff further stated that it would be hard to predict the number of feet for the setback until the developer of Kingstowne L.P. submitted something.

Mr. Hammack wanted to know whether the hours of operation were contained adequately in some other development area because they were not contained in Appendix 3 of the Development Conditions. Staff replied that the hours of operation were contained in the proffers. Mr. Hammack asked if staff was satisfied

with the proposed lighting. Staff stated that the glare off to the side of the property was adequately mitigated. Staff further stated that the concern was the glow from the light in the sky during the night but that the concern was not enough to recommend denial.

Chairman DiGiulian called for speakers in support of the application.

Kevin Bednarsky, 6646 Kelsey Point Circle, located in the townhouse community adjacent to the proposed development, spoke in support of the application. He stated that the applicant had put together a package that included much needed amenities and tax generating businesses in Kingstowne. Mr. Bednarsky stated that the parcel was located in the commercial area of Kingstowne and that he did not feel that the bunker lighting or any other lighting would have had a negative impact to the night-time sky. He also stated that the applicant had worked tirelessly with the community to resolve all concerns of the community. Mr. Bednarsky asked that the Board move forward with the application.

Mr. Andy Hyme, 628 Hyme Drive, stated that on one occasion, he and his wife drove around for 30 minutes trying to find a parking space. He stated that the applicant was willing to provide adequate parking for their facility and that Development Condition 6 would compromise that, and it would create similar situations in the area where parking was inadequate. Mr. Hyme asked the Board to take that into consideration when making their decision.

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

Mr. Hammack made a motion to approve SP 97-L-051 for the reasons stated in the Resolution with modifications made to Development Condition 1, and with the addition of the hours of operation to be added as Development Conditions 5 and 6. Staff commented to Mr. Hammack that the references to the eating establishment were covered under the PDH-4 which was not before the Board. Mr. Hammack stated that it was included in the staff report. Staff stated that the special permit application covered the area that was spoken of in the diagram shown to the Board. The eating establishment was located to the west of the line and was not within the application property for the special permit. Staff also stated that the BOS approved the proffer condition amendment addressing the portion which approved the eating establishment. Staff further stated that the golf center was within two zoning districts, and that the R-1 area was addressed by the special permit application.

Mr. Hammack wanted staff to delineate what was part of the R-1 area being approved. Staff indicated that to the Board on the viewgraph. Mr. Hammack asked the Clerk to delete the condition related to the restaurant. He also stated that the actual operation of the driving range would be the only addition and in Appendix 3, what was shown as Number 5, would be renumbered as Number 6; Number 6 should be deleted. Mr. Pammel seconded the motion.

Mr. McPherson asked Mr. Hammack about the second part of a sentence contained in Condition Number 5 dealing with Planning Commission conditions and FDP C-448-31, and was this included in Mr. Hammack's motion. Staff stated that the applicant voluntarily included all of staff's recommended FDP conditions into the proffers, and that portion could be deleted and would not have any effect on the approval. Mr. Dively wanted to know if Mr. Hammack's motion incorporated the proffers. Mr. Hammack replied that it did.

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

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

PUBLIC COUNTRY CLUBS, INC. & TIMOTHY P. KAMPA, SP 97-L-051 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a golf driving range. Located at South Van Dorn St. 300 ft. south of Castlewellan Drive on approx. 11.0 ac. of land zoned R-1. Lee District. Tax Map 81-4((1))56 pt., 54 pt., and 55 pt. (Concurrent with PCA C-448-16, FDP C-448-31, SE 97-L-059 and SE 97-L-060). (Moved from 12/16/97) 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 13, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-607 of the Zoning Ordinance.

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

1. This approval is granted to the applicant or to an entity in which the applicant maintains a controlling management and ownership interest and is not transferable without further action of this Board, 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 Bengtson, DeBell & Elkin, LTD. dated September 1997 as revised through October 27, 1997 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 driving range and clubhouse shall be limited to the following hours of operation 8:00 a.m. to 9:30 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. Friday through Sunday during the months of April through October. During the months of November through March, the hours of operation will be 8:00 a.m. to 9:30 p.m. seven days per week. The driving range and miniature golf lights shall be immediately turned off at the end of the evening hours of operation.
6. The proffers accepted by the Board of Supervisors pursuant to the approval of PCA C-448-16 are incorporated into these development conditions by reference.

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.

Page 217 January 13, 1998, (Tape 1), PUBLIC COUNTRY CLUBS, INC. & TIMOTHY P. KAMPA, SP 97-L-051, continued from Page 216

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 January 21, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 217 January 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MUSTAFA CENTER, SPA 95-M-036 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 95-M-036 for place of worship and related facilities to permit building additions and change in development conditions. Located at 6844 Braddock Rd. on approx. 40,187 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4((1))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. Larry Becker, Agent, 5501 Backlick Road, Suite 220, Springfield, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant was requesting an amendment to the special permit to increase the hours of operation so that the office hours would be extended Monday through Friday. Hours for prayer would be extended from 8:00 a.m. to 9:00 p.m., seven days per week. Religious classes would be held from 10:00 a.m. to 2:00 p.m., Saturdays. Condolence services would be held 2:00 to 5:00 p.m. on Saturdays and Sundays as needed and the Observance of Ramadan would be included. The architecture was proposed to be changed to increase the height of the structure from 20 feet to approximately 28 feet measured to the top of the ridge line of the building, with minarets to a height of 35 feet. One access point was proposed to be adjusted from the west side of the lot to the northwest corner of the lot. The access point would still be adjacent to the Bradlick Shopping Center so that no access would occur on Braddock Road. Staff recommended approval of the request subject to the revised Development Conditions which limit the height to 24 feet, with minarets not to exceed a height of 31 feet. Staff submitted revised Development Conditions dated January 13, 1998, which included Condition 18 prohibiting the use of loud speakers on site.

Mr. Becker stated that the applicant was not before the Board to increase the use of the facility, but that the architecture of the building be modified to make it compatible with buildings that were typical of mosques and to extend the hours of operation. The concerns were that individuals would be able to educate their children in the ways of their culture and religion, and that they would have a gathering place for senior citizens and other individuals in their community.

The mosque would only be of interest to limited communities, specifically, people from the country of Afghanistan who spoke Arabic and Farsi, which limits the number of persons using the facility. Mr. Becker emphasized that it was important to the applicant that they be able to have a facility where their children could be educated. The applicants felt that their children were losing the knowledge of their culture. The usual attendance for Friday prayers would be between 40-50 people but may increase.

One of the applicant's reasons for coming before the Board was to modify the ingress and egress. Exiting on the west side of the property was dangerous. They were requesting that the ingress/egress be from the north side of the property. The applicant agreed with the proposed development conditions. The applicant asked that Development Condition 6 regarding the religious classes be changed to religious and cultural education classes, the purpose being to educate the people about their culture and religion.

Mr. McPherson asked if there was a new site plan for the application. Staff replied that there was a new special permit plat dated December 19, 1997, which was included in the staff report. Mr. McPherson also wanted to know if staff had a special permit plat from the prior application. Staff replied that it was included in Appendix 4 of the staff report. Mr. McPherson wanted to know what had changed since December of 1995 when the special permit was approved. Mr. Becker replied that one of the major problems was that the people of the Afghan Academy were under the impression that they would be able to use the facility seven days per week. Mr. Becker also said that the applicant also wanted to modify the architecture and was unhappy to find out that they had very limited use of a facility (Fridays from 12:00 - 3:00 p.m.) that

would cost over one million dollars to build. The applicant wanted to be given the same privileges as any other religious facility in Fairfax County. Mr. Becker reemphasized the applicant's desire to use the facility for educating their children.

Mr. Hammack wanted to know what the Afghan Academy intended to do in terms of its cultural and religious education in reference to the number of students that would be in attendance, and whether they would have to come back before the Board to apply for a permit for school of special education or religious education. Mr. Becker stated that they would not have religious classes during the week. The education of the children would take place on Saturdays. Mr. Hammack also wanted to know why they needed eight employees. Mr. Becker stated that they service the Afghan community and also control and operate the Mustafa Center.

Mr. Pammel asked Mr. Becker about the access point, stating that he also saw an access in the north and west. He wanted to know if there were two access points. Mr. Becker stated that there was ingress/egress to provide a circular pattern through the property to minimize the congestion and to promote the safety of the ingress/egress to the property.

Chairman DiGiulian called for speakers in support of the application.

Hassan Shidel, member of the executive board of the Afghan Academy, spoke in support of the application stating that Mustafa would be offering cultural, religious, and language classes to the children. He stated that the programs were designed as a deterrent from guns, drugs, and alcohol.

Sequenda Ruper, Architect, stated that modifications were made because the original drawings were done by inexperienced people. Mr. Ruper stated that the modifications were made to improve the beauty which would make it an asset to the neighborhood.

Ms. Samara spoke in support of the application stating that the Mustafa Center needed to be opened Monday through Friday for educational, as well as, religious purposes. Students would then have access to the library in the facility for research. The center is in close proximity to the elementary school and George Mason University. The center would also be available to non-Muslim students who may need to do research on the Islam religion. Ms. Samara stated that with the center being open for three hours on Friday, would make it difficult for students to complete research. Ms. Samara stated that the community should look at the center as an asset to the community instead of a threat.

Mohammed Fisher, Springfield, Virginia, stated that he has lived in the country for 14 years. He stated that he had everything he needed except his religion, heritage, and culture. He went on to say that those things were unique and that the only way that he could teach those things to his children would be for them to attend classes or go to a school where those things were being taught. He stated that he would like his children to be able to attend the Mustafa Center to learn about those things.

There were no other speakers in support and Chairman DiGiulian called for speakers in opposition.

Barbara Scarborough, 6909 Pacific Lane, Annandale, Virginia, representing Hillbrook Tall Oaks Civic Association, spoke in opposition to the application, stating that the owners of the Afghan Academy stated to the civic association that the building would only be used on Fridays from 12:00 to 3:00 p.m. which was approved by the BZA on December 13, 1995, in Development Condition Number 6. She stated that nine months after the approval of the special permit, a request was submitted to extend the hours. On December 31, 1996, a request was submitted to Zoning Evaluation Division proposing a new structure. Ms. Scarborough stated that the reply from Zoning Evaluation Division stated that the elevations were not in conformance and that approval of a special permit amendment would be required. She stated that construction began without prior approval for a building that was totally different from the one specified in the special permit. Ms. Scarborough stated that the Mustafa Center never intended to be a small facility with limited hours of operation. She further stated that Mustafa's brochure stated that they would be able to accommodate 400 worshipers. Ms. Scarborough stated that it was not intended to be a one-story building. She stated that what Mustafa was building and what they proposed were completely different. She stated that the association objected to the overflow parking, increased traffic, and extended hours. Ms. Scarborough asked that the expanded usage be limited and clearly defined, if approved.

The following changes were requested by Ms Scarborough: the maximum number of worshipers and other persons on site should not exceed 100; the use of loud speakers on the site should be prohibited; all parking should be maintained on the site and the center to remain a small use. She also asked that the impact on traffic be closely monitored.

Mr. Pammel asked Ms. Scarborough for a copy of her proposed revisions. Mr. Ribble also asked Ms. Scarborough to provide the Board with a copy of the brochure that she referenced.

Garfield Cross, 6936 Colburn Drive, Annandale, Virginia, spoke in opposition to the application. He stated his concern was for the changes to what was already proposed by Mustafa Center. Mr. Cross's property is located on the cul-de-sac, and the back part of his property abuts the shopping center. He has had problems with some of the establishments concerning noise and garbage that was thrown on his property. He has even had occasions where drunks from one of the establishments to the rear of his property has caused disturbances. He stated that the traffic in the area was incredible, which has caused several accidents. Mr. Cross stated that the growth of the establishments in the area, as well as the church, would intensify the problems.

Mr. Cross stated that there was no buffer between the properties and the Mustafa Center and that they had already torn down a lot of the trees. He stated that the owners rushed to put the building up without notifying the community of the changes they proposed. He requested that the Board deny the applicant's requested changes.

Mr. Dively asked Mr. Cross if his main problem was with the shopping center. Mr. Cross stated that his main problem was with the intensity of the activity in the area that would increase once the Mustafa Center was completed.

Judith Currier, representative of Leewood Homeowners Association, spoke in opposition. She said that the community, which consists of 195 homes, was located at the intersection of Backlick and Braddock Roads. The concern was for the increase of traffic in the area. Ms. Currier stated that Mustafa's proposal would drastically increase the use of the center. She stated that the proposal would cause serious risk for the community both for safety and property values. She asked the Board not to increase the hours of worship. She suggested as an alternative that the estimates of usage provided by Mustafa be limited to the occupancy excluding any usage of 100 people during rush hours. The permit could allow 10 people except for the hours of 12:00 p.m. to 3:00 p.m. on Fridays when they would be able to have 100.

Ms. Currier stated that Mustafa continues to construct a building which they desired to have and not what was submitted in their proposal, and the building was not compatible with the surroundings. She stated that if Mustafa required a larger use, they should have acquired a larger parcel of land. She asked the Board to honor the original agreement.

David F. Browski, 6824 Pacific Lane, Annandale, Virginia, in the Hillbrook/Tall Oaks Subdivision stated that he welcomed the building of the center when it was first proposed, but he that he now opposed the changes that had been requested. He urged the BZA to reject the changes.

Phil Dentz, Vice President/Manager of Total Crafts, spoke in opposition to the application. He stated that Total Craft has been a family owned business since 1976. His main concern was the ingress/egress to the property. He voiced concern about the parking situation once the Mustafa Center was in full swing and asked the Board to take that into consideration when making their decision.

William Thomas, of Fagelson Schonberger Payne & Deichmeister, P.C., spoke on the behalf of the Combined Properties, owners of the shopping center and stated that he was there to make some observations. He wanted to make sure that the shared parking agreement would be stated clearly. He said that the original ingress/egress was in place and that the feasibility of the others had not been determined by the engineers, but it appeared that the most northern access point would work better for the shopping center's purposes.

Clausen Chrislickey, 4715 Dodson Drive, lived in the neighborhood for eight years. He had concerns about the traffic. He stated that in Appendix 3, Mustafa stated that they expected a maximum of 100 people in

attendance at any one time for all services. He stated that Mustafa had been disingenuous with the Board and that he felt that the Board's original concerns were well founded.

In his rebuttal, Mr. Becker stated that he always tried to be as honest as possible to avoid being disingenuous with the Board. The limits set by the Board were well understood by the applicant to be 100 persons on the site. He stated that the Afghan community were educated in regard to the brochure that was distributed, although no one had acknowledged sending it out. Mr. Becker stated that he had given the Board the history of the number of persons who attended the meetings, between 45-50 people on Friday afternoons. He said they expected that number to increase.

Mr. Becker stated that he had been working with Combined Properties to make arrangements for shared parking on special holy days. He stated that there was an excess of 93 spaces in the back of the shopping center that were not being used by anyone. He further stated that plans had been made to ensure that no one parked in front of the shopping center, or any of the stores, or in the neighborhood. Mr. Becker explained that he had been working with the community to ensure that there would be no additional impact on the neighborhood.

Mr. Becker stated that modifications requested were minimal, and that the applicant asked for a change to be made in the facade of the structure to make it look like a mosque. He stated that the applicant agreed to modify the height of the minarets and the roof line. The building, he stated, was in total compliance with the special use permit. Mr. Becker stated that it would be difficult to raise funds for the building without the structure being built.

Mr. Ribble questioned Mr. Becker about the other figures pointed out in the brochure, one being the renting of space in the mosque. Mr. Becker replied that many of the persons he dealt with were unsophisticated people with regard to the County government and zoning. Mr. Becker stated that it was the first time that they had retained legal counsel. He stated that they understood the limitations imposed upon them by the special use permit and that every effort would be made to comply with all of them. Mr. Hammack pointed out that even though Mr. Becker claimed that the people were not sophisticated, they had a tax exempt number.

Mr. Hammack also inquired as to how the Afghan Academy could accept contributions but not know who sent out the brochure supporting the construction. Mr. Becker stated that he did not discuss the situation with everyone, so he could not say there was not no one at the Academy who knew about the brochure.

Mr. Becker stated that the civic association wanted to limit one of the special use conditions on the parking to 48 spaces on site with no shared use parking. He stated that the arrangements for the shared parking were to alleviate potential problems. He asked the Board to let the language remained "as is" in the special use conditions and also that all other conditions remained "as is" as stated by staff.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that his main concern was the brochure that was distributed by the applicant. He stated that the brochure clearly indicated that the Afghan Academy had much bigger plans than indicated in their proposal. Mr. Pammel stated that he was not at all happy about the situation and that he did not want to see another situation similar to Seven Corners which was immediately present in his mind because that was on a small site and the use had grown much larger than the Board anticipated. Mr. Pammel made a motion to defer decision on the application for a period of one month to allow the Afghan Academy to provide the Board with an affidavit executed by those who were in authority stating that the brochure was null and void, and that they would live within the constraints of the 100 people previously approved, and that number was approved based on the ability of the site to accommodate the use. He stated that the Board looked at the size of the site when it previously approved the applicant's special permit. Mr. Dively seconded the motion to defer.

Mr. Ribble wanted to know if the brochures were declared null and void, would the donations be returned.

Mr. Pammel stated that they should be made aware of the limitations of the facility.

Mr. McPherson stated that the essence of the issue before the Board could be solved and that he was not going to support the motion.

Mr. DiGiulian concurred with Mr. McPherson's statement. Mr. DiGiulian stated that he was concerned about the hours of operation. He said that at the time when the original application was heard, the applicant indicated that the hours of operation were their hours and not hours that were imposed by the Board, and he believed that is what the neighborhood bought into. He also had a problem with the change in the facade of the building.

The first motion failed for lack of 4 votes.

Mr. Hammack stated that he shared the concerns of the other Board members and said he recalled that when he made the motion to grant the limited use initially, he expressed concerns about the size of the site and that the use would have to remain compatible with the area. He also expressed concern about what was stated in the brochure. Mr. Hammack stated that he could not support the hours of operation because it was too much for the site.

Mr. Hammack made a motion to deny the application and stated that there were very persuasive testimony concerning possible traffic problems related to the site, that the site was too small for the intensity of the use proposed, but he did not have an objection to the proposal as originally granted with very limited use. He stated that he felt that the applicant did not present testimony indicating compliance with all the general standards under Section 8-006 of the Ordinance. Mr. Ribble seconded the motion made to deny the application.

Mr. McPherson stated that he wanted to make note of the fact that when the applicant came before the Board previously, there was opposition from the neighborhood. He stated that the applicant was concerned that the Board would be tainted by other applicants that came before them. Mr. McPherson assured the applicant that each case was looked at individually. He assured the applicant that the Board would not include other problems with other places when making their decision. Mr. McPherson stated that he was concerned the applicant had not met the necessary standards. He further stated that the site was too small for the proposed use. Mr. McPherson stated that under those circumstances, he would vote to deny the application. The motion to deny SPA 95-M-036 carried by a vote of 5-0-1 with Mr. Dively voting nay.

Mr. Hammack moved that the one year waiting period be waived. Mr. Pammel seconded the motion to waive the one year waiting period. This vote carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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

MUSTAFA CENTER, SPA 95-M-036 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 95-M-036 for place of worship and related facilities to permit building additions and change in development conditions. Located at 6844 Braddock Rd. on approx. 40,187 sq. ft. of land zoned R-2. Mason District. Tax Map 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 January 13, 1998; and

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

1. The applicant is the owner of the land.
2. The original application was granted with very limited uses.
3. The brochure highlighted increased activities.

4. The religious use of the center would be possibly subordinate to other uses.
5. The hours of operation requested is too much for the site.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 5-1. Mr. Hammack moved to waive the one year refile period and Mr. Pammel seconded the motion. 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 January 21, 1998.

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Page 222 January 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030 Appl. under Sect(s). 3-C03 of the Zoning Ordinance for church and related facilities and nursery school. Located at 15133 Lee Hwy. on approx. 10.47 ac. of land zoned R-C, WS. Sully District. Tax Map 64-2((3))21; 64-2((2))19, 20, 21. (Continued from 11-18-97)

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 Robson, Robson Group Architects, Agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting approval of a 650 seat church and a nursery school with a maximum daily enrollment of 80 students. In the September 16, 1997, Addendum, staff recommended denial of the application due to the applicant's failure to meet the standards of the Zoning Ordinance for a special permit and failure to be in harmony with the recommendations of the Comprehensive Plan as evidenced by numerous unresolved issues, most importantly, the size and location of the church structure on the southern portion of the site and the associated traffic. At the September 16 hearing, the case was deferred because the Board wanted the applicant to eliminate Phase III to cut down on the size of the church and to work with staff to address the remaining issues.

The applicant submitted a revised plat on December 9, and based on that, another addendum was published on January 5, 1998, and dated through December 5. The addendum eliminated four parking spaces, reduced the height of the building from 52 feet to 40 feet, kept Phase III but reduced Phase III from 19,000 square feet to 14,000 square feet, and the Floor Area Ratio (FAR) from .079 to .068. It also relocated the structure 20 feet further from the western lot line, 19 feet closer to the eastern lot line, and 11 feet closer to the southern lot line. It moved the Phase III parking lot 30 feet further from Cedar Spring Road and reduced the undisturbed open space from 35 percent to 34 percent.

Staff still felt that there were several unresolved issues, such as the entrance that was still shown from Cedar Spring Road which would bring a significant increase in traffic through a residential neighborhood. Even though the height and the square footage had decreased, the location of the structure did not change significantly and had been moved closer to the eastern and southern lot lines. Staff still recommended denial of the application.

On January 9, the applicant submitted another revised plat, but staff did not have significant time to review and address the revised plat. Upon brief review, staff noted that the applicant had made some changes. Six additional parking spaces were eliminated and additional right-of-way dedication was indicated along Lee Highway.

Page 223, January 13, 1998, (Tape 1), CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030, continued from Page 222

There were also conflicting notes on the plat, one being that the entrance from Cedar Spring Road would be installed in Phase I, another note stated that it would be installed in Phase III.

Mr. Ribble asked Mr. Almquist from the Office of Transportation to respond to the letter contained in the staff report which suggested there were some agreement between the County and the applicant. Mr. Almquist stated that there was a misunderstanding concerning whether access from Cedar Spring Road should be in Phase I or Phase III. He said that published reports indicated Phase I. The use would allow a U-turn on Lee Highway which was not supported by the Office of Transportation.

Mr. Robson submitted letters of support to the Board, one of which was from Supervisor Frey's office. Mr. Robson stated that the applicant had been in the process of trying to revise the issues addressed in Addendum 2. He stated that he did not receive Addendum 2, but instead received the BZA's original staff report. Mr. Robson stated that the plats were revised to reflect the staff's concerns in Addendum 2. He stated that they were currently accessing off of Cedar Spring Road which would be implemented with Phase I and improve Cedar Spring Road from Lee Highway to the point of entry. Mr. Robson stated that the applicants also elected to construct a left turn lane at Cedar Spring and Lee Highway and a right decel lane off Lee Highway directly into the property.

Mr. Robson stated that the applicant had taken steps to address the comprehensive issues raised by staff such as reducing the size of the building, increasing some of the setbacks, the provision of additional landscape screening, and designing the building so that it would have residential character. He said the applicant was also providing a number of off-site improvements such as transportation, access, and sewer lines.

Mr. Robson noted inconsistencies in how other special permit and special exception cases have been approved such as St. Peter's of the Woods, Fairfax Baptist Temple, and the Korean Presbyterian Church which were all very similar to the applicant's proposals. Centreville Presbyterian proposed a FAR of .067. He said they requested 650 people in Phase III. Mr. Robson stated that this was in harmony with the Comprehensive Plan, if the applicant's proposals were compared with the above noted cases.

Mr. Robson stated that all neighborhood concerns had been identified and addressed. He asked the Board if they would inquire from those persons wishing to testify whether they were title owners or just residing at the residence. Mr. McPherson wanted to know what the difference was. Mr. Robson replied that a renter was transient and would have no vested interest. Mr. Robson referred to a letter by the Health Department referencing septic versus sewer and that Cedar Spring Road should be brought up to standards according to Virginia Department of Transportation (VDOT). Mr. Robson stated that the septic issue was more risky and a threat to the area. The water tests submitted by the applicant indicated that septic fields had failed.

Robyn Antonucci, Senior Transportation Planner, Wells and Associates, stated that her firm was hired by Centreville Presbyterian Church in order to assist in addressing transportation issues. She stated that the transportation issues had been resolved, such as the Route 29 improvements and access issues. The only remaining issue or concern was in regard to the time when the access point to the property would be opened to traffic. Because the use would be off peak, she stated that there would be no significant impact to the neighborhood.

Chairman DiGiulian called for speakers in support of the application.

Steve Zappone, 14809 Hunting Path Place, Centreville, Virginia, stated that he has lived in Centreville for the last 22 years and that he was in favor of the construction because it would bring needed sewer lines close enough to make vacant lots on Cedar Springs buildable. He stated that he bought three lots on Cedar Springs Road in an attempt to invest in the future of Centreville. He had hoped to build a house on one of the lots but waited 19 years for sewer to become available on that street. He stated that he pays the same taxes as those persons that have houses on their lots. The lots are useless to him because he could not build on the lots. With the introduction of sewer into the area, he stated that it would increase tax revenue because more homes could be built. Centreville Presbyterian, according to Mr. Zappone, would provide that opportunity.

The following people spoke in opposition:

Shawn Kilby, 6631 Cedar Spring Road, stated that not many of the issues had changed since the last meeting. He asked that the Board deny the application. He stated that the residents were not against the church, but that the residents were against the traffic. He stated that he did not want a parking lot next to his house. He made mention of a letter sent to some of the residents on Cedar Springs Road from Mr. Robson. In that letter Mr. Robson stated that the Cedar Springs Road residents opposed the church because the residents wanted to preserve their way of live with unsafe intersections and failing septic tanks. Mr. Kilby stated that the letter was misleading because the septic tanks were not failing and the residents do not want to hook up with County sewer lines. He stated that the proposal would adversely impact and change the character of his community. He stated that if Cedar Spring Road was used as Phase I access, that he would like to see all the screening for Lots 19, 20 and 21 to be Phase 1 screening. He asked that the Board not grant relief on any of the transitional screening requirements and that the Board not grant access from Cedar Spring Road.

Gilda Carter, 6725 Cedar Spring Road, spoke of the rural, country street where she lives that currently served six homes. She said the neighborhood is quiet and serene and traffic had never been an issue on her street. She further stated that the neighborhood was planned and developed for residential use. Centreville Presbyterian would adversely impact the character of the neighborhood. She said the proposal was not compatible with the neighborhood.

Georgette Tsongos, 6713 Cedar Spring Road, presented to the Board a picture of the proposed Phase III parking. The pictures depicted how the proposal would destroy the surrounding beauty of the neighborhood. She stated that the reference made by the church concerning the failing septic systems were untrue. Ms. Tsongos stated that the church would be an intrusion and disruption against the peacefulness and beauty of Cedar Spring Road.

Royce Deterding, 6713 Cedar Spring Road, stated that his problem was with the magnitude of the church and the way the residents of Cedar Springs had been regarded. Mr. Deterding stated that the church would negatively impact the secluded country charm of the neighborhood. He said If the proposal was granted, there would be 900 cars approximately 70 feet from his house (1,300 on any given Sunday).

John Grier from VDOT stated that they were willing to work with the residents to add a left turn lane when Route 29 was widened to six lanes, that it was already being set up without the help of the church. Sewer lines and public utilities, he stated, were not attractive to him because he stated that he specifically wanted well water and a septic system. He stated that the church would have a negative impact and asked the Board to deny the application.

Mike Wynkoop, spoke for his father, Westmoreland D. Wynkoop, who is the owner and resident at 15109 Lee Highway. He stated that the church would disturb the wildlife. He stated that there is nothing wrong with the septic fields and the water. The blasting would destroy the wells that they now use for water. He stated that the traffic on Lee Highway on any particular Sunday is already congested; with the church's proposal, there would be gridlock. If the church is approved, water run off problems would increase. He asked that the Board deny the request.

In his rebuttal, Mr. Robson gave Board members handouts referencing results of the ground water tests.

Ms. Antonucci explained to the Board what the impact would be to the traffic in the Cedar Springs Road neighborhood. According to her report, the impact after all phases had been completed would be a total of 24 vehicles per hour at the p.m. peak hours. On Sundays, the traffic would be more significant during the half hour before and the half hour after services. She stated that although the residents of Cedar Springs were concerned about protecting their open space, the church had vested property rights also. She stated that the church did not believe they would be a detriment to the community, but rather, an asset.

Susan Langdon stated that access was only one of the issues that concerned staff, but also the size and location of the building on the lot was a concern. Staff believed that the building should be moved and reduced in size to have less impact on the community. Ms. Langdon also commented on Mr. Robson's statements regarding other applications which he claimed were similar to Centreville Presbyterian's, that even though those applications were approved, it was not necessarily what staff supported or recommended.

Page ~~225~~ January 13, 1998, (Tape 1), CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030, continued from Page ~~224~~

Mr. McPherson made a motion to deny SP 97-Y-030 stating that the church should learn to live and co-exist with the neighborhood in a mutual supporting manner. He stated that he did not think that the Plan, in particular, the transportation aspect of it, could meet the standards necessary for the granting of a special permit. The proposal would not permit the neighborhood to remain close to what it is presently. Mr. Ribble seconded.

Mr. Dively stated that he would vote contrary to the motion because the site is a large one and that a lot of property had been dedicated, and that there was no where else to build the church. He stated that churches belong in residential areas. He concurred with Supervisor Frey that the entrance was not an ideal one but that it was a safe and sufficient access. He agreed that Cedar Springs would never be the same, but that he felt that the lifestyle of Cedar Springs would not remain the same regardless of what is done.

Mr. Pammel stated that he would not support the motion. He said he agreed with Mr. Dively. He stated that the community was changing and that a school site had been approved in close proximity to where the church was located. Mr. Pammel stated that the Board had consistently taken the position that churches and community uses should be located on major highways, not tucked away in areas that had difficult access. He stated that the proposal met the Board's criteria for the location of a church.

Special Permit SP 97-Y-030 was denied for the reasons stated in the Resolution. There was a vote of 4-2. Mr. Pammel and Mr. Dively voted nay. Mr. Kelley was absent from the meeting.

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

CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030 Appl. under Sect(s). 3-C03 of the Zoning Ordinance for church and related facilities and nursery school. Located at 15133 Lee Hwy. on approx. 10.47 ac. of land zoned R-C, WS. Sully District. Tax Map 64-2((3))21; 64-2((2))19, 20, 21. (Continued from 11-18-97) 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 13, 1998; and

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

1. The applicant is the owner of the land.
2. The neighbors do not live in a vacuum and must realize that the County is growing.
3. The church and neighbors must coexist and live side by side in a supporting manner.
4. The transportation portion of the plan does not meet the standard necessary for the granting of a special permit.
5. The plan will not permit the neighborhood to remain anywhere close to its present condition.
6. Am incorporating all previous comments and staff's comments from the staff report.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-303 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 4-2. Mr. McPherson moved to waive the one year refiling period and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Page 320, January 13, 1999, (Tape 1), CENTREVILLE PRESBYTERIAN CHURCH, SP 97-Y-030, continued from Page 315

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 21, 1998.

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Page 320, January 13, 1998, (Tape 1), After Agenda Item:

Memo from William E. Shoup, Deputy Zoning Administrator, regarding
Kartharias, Inc. t/a as The Shark Club Billiards and Café

Mr. Ribble suggested that the case be deferred for several months until zoning violations could be investigated to see what was going on there. Mr. Shoup said that the Zoning Administrator's office has provided a Notice of Violation. He said that at this point, an appeal had not been filed with the notices but that his office has had indication that this could occur.

Lawrence Lawson, Jr., Agent, said that applications were being prepared for the Board of Zoning Appeals (BZA) and since it will be presented in a formal manner, a hearing is not appropriate at this time.

Mr. Dively commented by saying that the reason the case came before the Board was because of recent police incidents. Staff said that there were a total of 85 police reports on file from the time the Shark Club opened. Mr. Dively suggested that the Zoning Administrator's office consult with the police department to find out what the nature of the incidents were and whether there were reasons to reassess or impose other conditions on the special permit. Mr. Dively also asked the Zoning Administrator's office to consult with the County Attorney's office and find out what the Board's authority is in this situation to reassess on the Board's own motion. He also asked that an independent evaluation be done to find out whether or not the condition regarding compliance with the Alcohol Beverage Corporation (ABC) regulations have occurred. He said that it was his belief that an independent assessment has to be made and that the results be brought before the Board. Mr. Shoup asked for clarification on the consultation with the ABC board. Mr. Dively stated that this was a separate Board issue. Mr. Dively moved to defer the case for three months to April 7, 1998, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0.

Mr. Dively asked Mr. Shoup if he knew how long it would take for the evaluations to be completed and Mr. Shoup said that three months would be sufficient time.

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Page 320, January 13, 1998, (Tape 1), After Agenda Item:

Revised Plats for William Bern, VC 97-P-096

Susan Langdon, Chief, Special Permit and Variance Branch, stated that a revised plat had been received for the above referenced appellation. She said the applicant wanted to add a second-story to the garage and the Board approved the garage to remain but denied the second-story addition and asked that the applicant resubmit their plats deleting one note that referenced the height of the proposed addition. She stated that the applicant did what the Board requested.

Mr. Ribble made a motion to approve the plat as presented. 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 320, January 13, 1998, (Tape 1), After Agenda Item:

Approval of January 6, 1998, Resolutions

Mr. Pammel made a motion to approved the Resolutions. Mr. McPherson seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.


Page ~~221~~ January 13, 1998, (Tape 1), Scheduled case of:

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As there was no other business to come before the Board, the meeting was adjourned at 11:57 a.m.

Minutes by: Ann-Marie Wellington

Approved on:


Susan C. Langdon, Chief
Special Permit and Variance Branch


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 20, 1998. 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 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the only scheduled case.

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Page 22 January 20, 1998, (Tape 1), Scheduled Case:

8:00 P.M. ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and child care center. Located on Sugarland Rd. at the Fairfax/Loudoun County Line on approx. 2.27 ac. of land zoned R-1. Dranesville District. Tax Map 5-4((1))3, 4 pt. (MOVED FROM 12/10/97 2/25/97, 3/18/97, 6/17/97, 7/15/97, 9/23/97, and 11/18/97.)

Chairman DiGiulian noted for the record that a deferral request was before the Board. He asked staff if they agreed with the request.

Susan Langdon, Branch Chief, Special Permit and Variance Branch, replied that staff had no objections and suggested a date of February 17, 1998, at 8:00 p.m.

Mr. Hammack asked the Chair to poll the audience to determine if there was anyone present to speak to the deferral. Chairman DiGiulian did so and no one came forward to speak.

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 7-0.

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Page 23 January 20, 1997, (Tape 1), Action Items:

Approval of September 30, October 14, October 21, November 18, and December 2, 1997 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 24 January 20, 1998, (Tape 1), Action Item:

Reconsideration Request for Mustafa Center, SPA 95-M-036

Larry Becker, attorney for the applicant, came forward to elaborate on the request presented to the Board. He explained that representatives on both sides were shocked by the Board of Zoning Appeals' decision to deny the application. Mr. Becker said there were several issues that needed to be resolved as quickly as possible, in particular the safety issue dealing with ingress/egress of the property. He said the applicant understood there were other issues dealing with the facade of the building, the roof of the building, and the hours of operation and would like the opportunity to continue to work with the community.

Mr. Becker pointed out that members of the Afghan Academy who could address the issue that was raised regarding the brochure that was mailed out outlining what the proposal for the property. He explained that the brochure was prepared by the fund raising committee in an effort to raise the funds to construct the mosque. There are approximately 400 members in the Afghan Academy, which is composed of individuals in the metropolitan area. The brochure was written in a way that would appeal to all the community, not just the members. Mr. Becker said he has read the brochure and that he understood the Board's concerns about the

applicant's credibility and that he had explained that concern to the applicant. He said the applicant would humbly ask that the Board allow them to work with the community and the local citizens association to reach a resolution that will make everyone happy including the Board.

Mr. Becker introduced the president of the Afghan Academy should the Board have any questions for the Academy. The Board had none.

Mr. Pammel said at the last meeting he had suggested that the Board defer action to allow the applicant to resolve outstanding actions; therefore, he would make a motion that the Board reconsider its action to deny SPA 95-M-036 and schedule it for the March night meeting. Mr. Dively seconded the motion.

Mr. Hammack said it was difficult to oppose the motion but he personally needed some reassurances that the applicant is going to agree to live by whatever development conditions the Board imposes on the application. He added at the last hearing people who had been interviewed by Mr. Becker would not admit to authorizing the brochure; therefore, credibility was still an issue as far as he was concerned.

Mr. Ribble pointed out that the Board had waived the 12-month time limitation for filing a new application at the public hearing and noted that he would not be inclined to reconsider the application based on Mr. Hammack's comments. He said he would not support the motion for reconsideration.

Mr. McPherson reiterated the comments he made the public hearing wherein he stated that he looked at this as a new application to determine if it met the standards and he did not. He cautioned the Board with inviting applicants to permit the Board to rewrite their applications for them and he believed the Board should be very cautious about being put into a position that where it appears that the Board is promising something that it is not designed to deliver. Mr. McPherson opposed the motion.

Chairman DiGiulian agreed with Mr. McPherson's comments and a portion of Mr. Hammack's comments. He pointed out that the application is a long ways from the one originally approved by the Board in that the facade of the building and the hours of operation are incompatible. Chairman DiGiulian said the only part of the request he could support would be the change in the entrance; therefore, he could not support the motion to reconsider.

The motion to reconsider failed by a vote of 2-4-1 with Mr. Dively and Mr. Pammel voting aye. Mr. Kelley was not present at the public hearing and abstained from voting.

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Page 230 January 20, 1998, (Tape 1), Action Item:

Additional Time Request for
Ridgeview Country Club Limited Partnership, SP 95-Y-003
(Changed to Fairfax Golf Club, LLC)

Mr. McPherson made a motion to grant the applicant's request as suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is January 19, 2000.

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Page 230 January 20, 1998, (Tape 1), Action Item:

Additional Time Request for
Springfield Golf and Country Club, SPA 76-S-182-4

Mr. Ribble made a motion to grant the applicant's request as suggested by staff. Mr. McPherson seconded the motion which carried by a vote of 7-0. The new expiration date is May 24, 1999.

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Approval of January 13, 1998 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 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 8:16 p.m.

Minutes by: Betsy Hurtt

Approved on:

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 27, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and, John Ribble. There were no members absent.

Chairman DiGiulian called the meeting to order at 9:06 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 233 January 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CORNWELL FARM L.L.C., SP 97-D-040, Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit riding and boarding stable. Located at 9414 Georgetown Pi. on approx. 9.41 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))58A pt. and 58B pt. Reconsideration granted 11/11/97).

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy Steele Scileppi, Esquire, with the firm of Walsh, Colucci, et al, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the staff report. She explained that SP 97-D-040 had been denied at the November 4, 1997. The Board of Zoning Appeals (BZA) granting a reconsideration hearing which was being held this day. Ms. Langdon noted that staff received a revised plat, dated December 5, 1997, which relocated the stable, reduced the parking lot area, and moved the riding ring several feet from its original proposed location with a proffered evergreen tree buffer. She pointed out that staff received revised proposed development conditions on January 22, 1998, most of which were incorporated in staff's Revised Proposed Development Conditions contained in Appendix 1 of the staff report Addendum dated January 26, 1998. Ms. Langdon stated that staff had no objection with the parking lot and riding ring's relocation and recommended approval subject to the revised proposed development conditions.

Responding to BZA and citizen concerns expressed at the November 4th hearing, Tracy Steele Scileppi gave a brief overview of the property's redesigned layout as depicted on the revised plat dated December 5th. She pointed out how the facility's impact was internalized by moving the manure pad, the riding ring, the stable, and the parking area. She explained that the use was mitigated by reducing the stable's height and providing additional plantings, screening and buffering. Ms. Scileppi noted that the access driveway would be paved, therefore, the waiver request for a dustless surface was unnecessary. Ms. Scileppi informed the Board that, although originally opposed to the application, after a December 23, 1997, meeting with the Great Falls Citizens Association (GFCA) Executive Committee, GFCA conceded that the additional screening and relocation of the riding ring greatly reduced the use's impact and, it was her understanding, that the GFCA had since withdrawn its opposition to the application. She addressed the 100-foot setback issue that was raised at the November 4th hearing, again pointing out that the issue was addressed on the December 5th plat. In response to an adjoining property owner's request, Ms. Scileppi pointed out the locations of the additional screening. To address a GFCA's concern, she called the Board's attention to Condition #20's language regarding an easement along the property's frontage for an equestrian trail. She noted that the easement required the Department of Environmental Management's (DEM) review and affirmed that stormwater management issues would be addressed pursuant to DEM's directives. Ms. Scileppi submitted that the applicant's revised application, although not meeting the exact letter of the transitional screening requirement met the intent. In concluding her presentation, Ms. Scileppi pointed out that the revised application enjoyed the support of many of the surrounding property owners and that significant modifications were made to address and resolve issues and concerns. She responded to Mr. Kelley's questions concerning parking along Georgetown Pike, the reduction of parking spaces, and the maximum number of horses boarded. Ms. Scileppi addressed Mr. Ribble's questions concerning the impact on an adjoining neighbor, Mr. Cohen.

There being no further questions or comments from the Board, Chairman DiGiulian called for speakers.

Mr. Richard Peters, a member of the Executive Committee of the GFCA, informed the Board that the Association's decision, rendered the previous night, was to be "neutral" concerning the application. He brought the Board's attention to the January 26, 1998, letter of the GFCA's President, Mr. John C. Ulfelder,

which recognized the diligent efforts of all the affected parties, the applicant, the adjacent property owners, and the Cornwell Farm Homeowners Association, to resolve the issues. Mr. Peters read a letter from the GFCA in a closing statement conceded that the immediately affected property owners must address the remaining concerns. Mr. Peters clarified that the letter, in which the GFCA had withdrawn its opposition, must not be misconstrued to represent approval of the special permit application.

Ms. Hope James, 9408 Georgetown Pike, expressed her support of the Cornwell Farm's application pointing out the alternative, which she found disagreeable, of seeing five houses instead of the stable. She pointed out that a subdivision was permanent while a special use was temporary and that the use proposed, which involved horses, conformed with the atmosphere associated with Great Falls. Ms. James stated that, in her opinion, 17 horses, 11 parking spaces, and the facility's strict operating hours would not significantly impact Georgetown Pike's traffic. She stated that the stormwater and runoff issues had been addressed and that she was confident that there would be no impact on her property. Ms. James affirmed the extensive efforts of Ms. Zimmer-Forster in keeping the neighbors informed and included in the application's progress, complimenting Ms. Zimmer-Forster for her conscientious consideration of concerns and issues.

Ms. Marjorie Fox, 660 Ad Hoc Road, Great Falls, President of the Cornwell Farms HOA, commended the good-faith efforts and discussions of all involved parties concerning the resolution of this application, adding however, that the majority of the homeowners continued to oppose it. She listed reasons for opposition as: a commercial use on residential property; the use's intensity; traffic impact; stormwater runoff; and the adverse impact on the immediate neighbors. Ms. Fox suggested additional transitional screening to mitigate the impact. Speaking on behalf of her homeowners association, she respectfully requested that the Board deny the application.

Mr. Harvey Cohen, 779 Ad Hoc Road, Great Falls, voiced his concern over the use's intensity and impact and the fact that the access road could not accommodate the ingress/egress traffic. He stated that if the Board was compelled to approve the requested waivers, he requested that the riding ring remain in the rear, at its original location.

Mr. George Moore, 9411 Cornwell Farms, Great Falls, stated that he was neutral on the issue. Mr. Moore believed that the applicant's considerable efforts and concessions, including the relocation of the riding ring and the stable and reducing its height, moving the manure pad, increasing the screening and buffering, and mitigating the noise, were each significant compromises which produced a reasonable and fair application.

Ms. Estelle Holley, 9421 Cornwell Farm Road, Great Falls, an adjoining property owner, voiced her concern about the impact this proposed commercial enterprise would have on the immediate neighbors. Her concerns included the small size of the parcel, the configuration of the property, and the fact that the 100-foot setback severely restricted the location of the barn, parking area, riding ring, and manure pad. She opposed the application's approval but suggested that a site visit be scheduled to assure compliance to all proffers and promises if the Board approved it.

Mrs. Angela Moore, 9411 Cornwell Farms Road, Great Falls, stated that she and her neighbors were the most impacted, as the barn and manure pile would be 225 feet from her property line. She requested that the riding ring be placed in the front of the property.

Mr. Frederick Weck, 660 Mind Ridge Road, Great Falls, stated that all concerned parties had made significant compromises to resolve the issues, but, regrettably, the most affected parties were resolute in their disagreement. He maintained that the 35-foot transitional screening should be required.

Mrs. Elenore Weck, 660 Mind Ridge Road, Great Falls, voiced her concern for the environment. Water runoff pollutants from horse management was a serious consideration and she believed that the number of horses proposed on the property was a potential hazard. She requested that the number be reduced to no more than nine.

There being no further speakers, Chairman DiGiulian called upon Ms. Scileppi for rebuttal.

Ms. Scileppi concurred that a good deal of compromise had occurred since the November hearing. She

stated that issues of safety and water runoff were considered when it was suggested that the riding ring be moved to the front and that the applicant was working on a soil and water conservation plan, as required by the development conditions. She noted that the security concern had been mitigated by fencing the ring. Ms. Scileppi pointed out that the facility's impact was shifted towards Mrs. Hope James' property and that she supported the application. She quoted the Ordinance's provision concerning the number of horses allowed per acre, reiterating that the applicant was producing a soil and water conservation plan to include nutrient management and pasture grazing management, as required by the development conditions. She addressed Mr. Weck's concerns regarding screening and buffering. In summary, Ms. Scileppi conceded that, although all the neighbors had not been satisfied, the applicant had put forth sincere and substantial efforts in offering a reasonable compromise as evidenced by the much improved application before the Board. She requested the Board's approval of the special permit.

Ms. Scileppi responded to Mr. Pammel's question concerning parking and the number of horses.

Susan Langdon, Chief, Special Permit and Variance Branch, had no closing staff comments, therefore, Chairman DiGiulian closed the public hearing.

Mr. Pammel voiced his concern over the site-distance entrance problem with its limited visibility. He noted the entrance was only 200 feet from Ad Hoc Road and a crest of a hill, which he believed was a potential safety hazard. Mr. Pammel commented that, if it was within the purview of the Board, he would stipulate that the entrance be moved and he posed that possibility to the applicant's representative.

Ms. Scileppi stated that the Office of Transportation had reviewed the site and met with homeowners regarding the concern. She pointed out that Development Condition #10 had been added to address the issue.

Mr. Pammel moved to approve SP 97-D-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report Addendum dated January 26, 1998.

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

CORNWELL FARM L.L.C., SP 97-D-040, Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit riding and boarding stable. Located at 9414 Georgetown Pi. on approx. 9.41 ac. of land zoned R-E. Dranesville District. Tax Map 13-1((1))58A pt. and 58B pt. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 27, 1998; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). R-E; 3-E03, of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9414 Georgetown Pike, 9.41 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 Christopher Consultants, Ltd., dated June 10, 1997, revised through December 5, 1997, 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 the following:
 - 1:30 p.m. to 7:30 p.m., Monday through Friday
 - 8:30 a.m. to 4:00 p.m., SaturdayIn addition:
 - 10:30 a.m. to 1:30 p.m., one morning per week, September through May
 - 8:30 a.m. to noon, Monday, through Saturday, June, July and August
6. There shall be a maximum number of eight (8) students per class.
7. Special events/horse shows shall be limited to no more than six (6) per year. All horses in the events/shows shall be limited to those horses boarded on site. Special events/horse shows may occur on Sundays between 12:00 noon and 4:00 p.m.
8. The maximum number of horses approved for boarding on the application property at any one time shall be seventeen (17).
9. There shall be eleven (11) parking spaces on site as shown on the special permit plat. All parking shall be on site.
10. The site entrance shall meet Virginia Department of Transportation (VDOT) requirements, unless waived or modified by VDOT.
11. The existing vegetation and proposed landscaping as depicted on the special permit plat shall be used to meet transitional screening requirements along all lot lines. The existing fencing as shown on the special permit plat shall satisfy the barrier requirement.
12. There shall be no loud speakers or amplified music on site.
13. A conservation plan outlining best management practices for the horse operation shall be developed and implemented, prior to approval of a non-residential use permit, in coordination with the Northern Virginia Soil and Water Conservation District. The conservation plan shall include management techniques for the operation, including pasture management, animal waste management, composting and nutrient management.
14. A maximum of five (5) lights may be installed around the riding ring as depicted on the special permit plat. The combined height of the light standards and fixtures shall be a maximum of twelve (12) feet. All ring lights shall be turned off no later than 6:45 p.m. and shall only be

utilized from November 1 through March 1. Security lighting may be allowed in or around the stable. No other lighting shall be allowed in connection with the riding and boarding stable. Additionally, all lighting shall be in accordance with the following:

- ▶ The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
- ▶ Shields shall be installed, if necessary, to prevent light and/or glare from projecting beyond the facility.

15. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance unless waived by the Department of Environmental Management (DEM). If waivers of the stormwater management and BMP requirement are not approved, and a structural SWM/BMP is required, then the type, location and size of the facility shall be determined by DEM. If the location requires clearing of any additional vegetation not shown to be cleared on the approved special permit plat, the clearing plan shall be reviewed by the Urban Forestry Branch of DEM and tree replacement may be required.
16. In addition to the landscaping shown on the special permit plat, the applicant shall plant the following, subject to the review of the Urban Forestry Branch, DEM:
- Eight (8) ornamental pear trees and twelve (12) Virginia Cedars, 8 to 10 feet in height at the time of planting, shall be provided along the eastern side of the existing gravel entrance driveway between Georgetown Pike and the location where the referenced asphalt driveway will split off. The purpose of the planting shall be to provide screening in the area where there are currently no trees;
 - Seven (7) three gallon azalea bushes, 30 to 36 inches in height at the time of planting and two (2) Virginia Cedars, 8 to 10 feet in height at the time of planting shall be provided along the western side of the existing gravel entrance driveway between Georgetown Pike and the location where the referenced asphalt driveway will split off. The purpose of the planting shall be to provide screening in the area where there currently are no trees;
 - Six (6) Eastern White Pines, 6 to 8 feet in height at the time of planting shall be provided in the northwestern corner of the site adjacent to the proposed septic field;
 - Three (3) maple trees, 6 to 8 feet in height at the time of planting shall be provided adjacent to the northern boundary of the proposed stable;
 - Three (3) eastern white pine or leyland cypress trees shall be provided along the eastern property line adjacent to the property referenced as 13-2((1))40. These trees shall be planted in the area on the special permit property that is currently not landscaped and located approximately 105 feet to 135 feet from the northeastern corner of the application property;
 - The area between the driveway and the riding ring shall be planted with trees and shrubs in a number and location determined in conjunction the Urban Forester;
 - The 23 eastern white pines depicted on the special permit plat along the northern property line adjacent to the property referenced as 13-2((6))4A may be planted with 23 leyland cypress trees 6 to 8 feet in height at the time of planting; and
 - The 13 eastern white pine trees depicted on the special permit plat north of the driveway adjacent to the riding ring may be planted with 13 Virginia Cedars, 8 to 10 feet in height at the time of planting.
17. The applicant shall be responsible for using proper care regarding the maintenance of the

riding ring. The riding ring shall be of a ground tire material in order to mitigate the potential for dust particles.

18. The asphalt driveway labeled on the special permit plat shall be constructed of a tar and chip mixture and shall be a dustless surface.
19. The applicant shall not record this special permit plat among the Fairfax County land records as a plat of subdivision. However, this condition does not preclude the property owner from future subdivision of the property, which may require a special permit amendment application.
20. Subject to approval by DEM of a waiver of the PFM trail requirement, the applicant shall grant an easement for use as an equestrian trail to Fairfax County along the Georgetown Pike frontage of the application property where a trail currently exists. The easement shall be located along the existing trail and between the four (4) foot rail fence and the four (4) foot board fence shown on the special permit plat. The granting of this easement shall not preclude the ability of the property owner, its successors or assigns, to construct (an) additional driveway(s), as necessary, to access Georgetown Pike should a future subdivision occur.
21. The riding ring shall be relocated to a location a minimum of 105 feet from the western lot line and a minimum of 200 feet from the southern lot line with the shortest side of the riding ring along the western lot line. The ring shall be 150 feet by 95 feet in size and shall be bounded by a wooden fence. The additional landscaping shall be added by the Applicant with the relocation of the riding ring:
 - Thirty (30) spreading yews 3 gallons in size, equally spaced, along the western, southern and eastern fenced boundaries of the relocated riding ring; and
 - Nine (9) Norway Spruce trees, six (6) to eight (8) feet in height at the time of planting, along the western boundary of the gravel parking area proposed to serve the riding and boarding stable use.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of *approval unless 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.

Stating that he opposed the motion, Mr. Hammack, commented that he believed that the applicant had made significant attempts to mitigate the impacts, but he remained dissatisfied with the proposed use as he viewed it as a commercial use in a residential neighborhood. He also noted that the property was small for the use, that he was concerned about the ingress and egress, and that the hours of operation would be intrusive to the adjoining neighbors.

Mr. Dively seconded the motion which carried by a 6-1 vote with Mr. Hammack opposed.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 238, January 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH C. AND JOYCE A. BLUE, VC 97-D-080 Appl. under Sect(s). 18-401 of the Zoning

Page ~~239~~ January 27, 1998, (Tape 1), JOSEPH C. AND JOYCE A. BLUE, VC 97-D-080, continued from Page ~~238~~

Ordinance to permit an accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 6829 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(I) 14, 16. (CONTINUED FROM 10/28/97 AND 11/4/97).

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William M. Baskin, Jr., Esquire, with the firm of Baskin, Jackson & Hansbarger, PC, 301 Park Avenue, Falls Church, replied that it was.

Ms. Julie Schilling, Staff Coordinator, presented staff's position as contained in the staff report dated October 21, 1997. She stated that the application had been deferred from October 28, 1997, and November 4, 1997, in order to address BZA issues concerning the location of the detached garage, less than one foot from the side lot line, and the determination of whether or not the garage was actually attached to the dwelling as defined in the Zoning Ordinance. Ms. Schilling noted that the applicant had submitted a copy of a five-foot wide maintenance agreement between the applicant and the adjacent property owner to enable them to maintain their garage without trespassing onto their neighbor's property. She pointed out that a copy of the easement and a cover memorandum was included in the BZA packet last week and that the applicants' representative, Mr. Baskin, would address the proposed use as it pertained to the variance.

Mr. Baskin explained that the easement would enable the applicant to maintain the portion of their property where the upkeep of the garage and lawn mowing could only be accomplished by traversing one edge of the neighbor's property, because the garage stands one foot from the lot line. He stated that, if approved, the easement would be recorded in the Land Records, thereby assuring continued maintenance of the lawn and garage regardless of the ownership of the property next door. Mr. Baskin added that the most affected neighbor considered the structure an asset, had willingly accepted the maintenance agreement, and believed that removing the structure would affect her negatively.

Chairman DiGiulian called for speakers either in support or in opposition to the variance and receiving no response, closed the public hearing.

Mr. Hammack stated that the structure had existed for many years without any objection, and that he never would have approved a structure so close to a lot line. He voiced his reservations on this variance's approval because he did not want to establish a negative precedent which might encourage someone to construct something too close to a lot line and then seek an approval after the fact. He submitted that this situation had been many years after the fact and because of the easement, this may be considered a valid exception. Mr. Hammack then moved to approve VC 97-D-080 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 21, 1997.

Mr. Pammel stated that this variance approval must not serve as a precedent for anyone to fail to obtain a building permit and then request a variance approval from the BZA.

Mr. McPherson noted his opposition pointing out the BZA's loss of credibility and inconsistency if such applications are approved as well as the fact that similar requests may be difficult to deny when approvals such as this are on record.

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

JOSEPH C. AND JOYCE A. BLUE, VC 97-D-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 6829 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(I) 14, 16. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

and WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 27, 1998; and

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

1. The applicants are the owners of the land.
2. The structure has existed for a number of years with no objections.
3. The approval is granted with reservations as the structure falls far too close to the property line and if this were an original application, the variance would be denied.
4. The applicant has obtained a maintenance easement from the adjoining property owner which addressed some issues regarding the construction of an accessory structure on a property line.
5. This exception must not be misconstrued to set a precedent.

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

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

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

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

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

1. This variance is approved for the location of a carport shown on the plat prepared by Richard H. Bartlett, dated June 12, 1997, as revised through June 18, 1997, submitted with this application and is not transferable to other land.
2. The applicant shall obtain the Zoning Administrator's approval of a building permit application for the structure.

- 3. The applicant shall record the perpetual maintenance easement granted by the adjacent lot for the detached garage. Failure to do so shall cause the variance to be rendered null and void.

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

Mr. Kelley seconded the motion which carried by a vote of 4-2 with Messieurs McPherson and Pammel opposed; 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 February 4, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THOMAS M. & KAREN J. SHAW, VC 97-V-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 9.6 ft. from side lot line. Located at 1786 Rampart Dr. on approx. 11,590 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((24)) 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. Mr. Thomas M, Shaw, 1786 Rampart Drive, Alexandria, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, made staff's presentation as contained in the Staff Report dated January 20, 1998.

Mr. Shaw read his Statement of Justification, which is contained in the staff report, to warrant the variance. He noted that several of his neighbors already had front porches.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Ribble moved to approve VC 97-V-114 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 20, 1998.

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

THOMAS M. & KAREN J. SHAW, VC 97-V-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 9.6 ft. from side lot line. Located at 1786 Rampart Dr. on approx. 11,590 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((24)) 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 January 27, 1998; and

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

- 1. The applicants are the owners of the land.
- 2. The lot is narrow and pie-shaped.
- 3. Only one corner of the proposed structure requires the variance.

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

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

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

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

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

1. This variance is approved for the location of a roofed deck shown on the plat prepared by Kenneth W. White, dated October 28, 1997, 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 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. McPherson seconded the motion which carried by a unanimous vote of 6-0 with Mr. Dively not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4,

1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TRACY SAVAGE, VC 97-P-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.2 ft. from front lot line and stoop 28.2 ft. from front lot line. Located at 8724 Wolftrap Rd. on approx. 22,804 sq. ft. of land zoned R-1, HC. Providence District. Tax Map 39-1 ((4)) 4. (DEFERRED FROM 2/2/97 FOR NOTICES).

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark A. Coupard, Esquire, 406 N. West Street, Falls Church, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the Staff Report dated January 20, 1998. In response to Mr. Pammel's question, Ms. Powell informed the Board that a 35-foot front yard is required in an R-2 District.

Mr. Coupard said that Ms. Savage would have attended today's meeting but, regrettably, she was called out-of-town. He explained her extensive renovation plans for her home of 13 years, pointing out that, because of marine clay problems, her front stoop had been replaced three times. He noted the dated floor plan with its unusual configuration. Mr. Coupard pointed out that several of the neighbors' homes were within very close proximity to either a lot line or Wolf Trap Road.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Pammel concurred with Mr. Coupard's statement that the adjacent homes were within several feet of Wolf Trap Road, because he had noted the same during his recent site visit to the subject property. He stated that the variance was justified. Mr. Pammel then moved to approve VC 97-P-092 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated January 20, 1998.

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

TRACY SAVAGE, VC 97-P-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.2 ft. from front lot line and stoop 28.2 ft. from front lot line. Located at 8724 Wolftrap Rd. on approx. 22,804 sq. ft. of land zoned R-1, HC. Providence District. Tax Map 39-1 ((4)) 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 January 27, 1998; and

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

1. The applicant is the owner of the land.
2. The variance is justified as the existing setback is too much for a 1/2 acre lot and, although zoned R-1, the lot size is more comparable to an R-2 district.
3. The next-door neighbor's house is over 10 feet closer to the road than the applicant's property.

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

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

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

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

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

1. This variance is approved for the location of an addition and stoop shown on the plat prepared by Mark Coupard, Architect, dated May 14, 1976, revised through February 6, 1991, and stamped "Received" September 19, 1997, 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 stoop 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 unanimous vote of 6-0 with M. Dively not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TIMOTHY W. & JILL L. HEITBRINK, VC 97-L-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from side lot line. Located at 6012 Jennings Ln. on approx. 10,753 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13))(M) 660.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Jill L. Heitbrink, 6012 Jennings Lane, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation, as contained in the staff report dated January 20, 1998.

Mrs. Jill Heitbrink explained their lot's configuration, which included a large space on the south side of the house where a driveway and a two-car garage could be added. She emphasized that strict application of the Zoning Ordinance precluded a garage entirely. She attested that her family would suffer undo hardship without the variance as they would be forced to move and that the variance would not be detrimental to their neighbors as there was a 29-foot setback from the lot line. She pointed out that many of the neighbors enjoyed two-story carports and two-story additions with family rooms above garages.

Mrs. Heitbrink responded to questions from Mr. McPherson and Mr. Hammack concerning roof line, its height and length and the approximate number of nearby neighbors with two-car garages and carports. She further explained the additions, a playroom, a workroom, and a sunroom, in response to Mr. McPherson. She informed Mr. Hammack that their next-door neighbors approved of the plan.

Chairman DiGiulian called for speakers and received no response. He then closed the public hearing.

Mr. McPherson moved to approve VC 97-L-115 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 20, 1998.

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

TIMOTHY W. & JILL L. HEITBRINK, VC 97-L-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from side lot line. Located at 6012 Jennings Ln. on approx. 10,753 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13))(M) 660. 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 28, 1998; and

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

1. The applicants are the owners of the land.
2. There is no other functional area to put the carport and the driveway is already there.
3. The proposed addition will be architecturally compatible and structurally consistent with the existing structure and the height is consistent with the existing house.
4. The request is reasonable and the garage won't negatively impact anyone.

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

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

- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted

by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

- 1. This variance is approved for the location of a garage, second floor addition and sunroom shown on the plat prepared by Robert P. Dunning, Architect, dated September 25, 1997, 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, second floor addition and sunroom shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a unanimous vote of 5-0 with Messieurs Dively and Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 21, January 27, 1998, (Tape 2), Scheduled case of:

9:00 A.M. MARY T. MCCONNELL, SP 97-H-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.2 ft. from side lot line. Located at 10034 Scenic View Terrace on approx. 23,040 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 18-2 ((9)) 124. (NOTICES NOT IN ORDER; REQUEST DEFERRAL DATE TO 3/224/98).

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the application's notices were not in order and that staff recommended a deferral date of March 24, 1998.

There being no objection by the Board members, Mr. McPherson moved to defer the public hearing to March 24, 1998 which was seconded by Mr. Pammel and carried by a vote of 6-0 with Mr. Dively not present for the vote.

Chairman DiGiulian acknowledged a citizen who indicated from the audience that he wished to voice an opinion. Chairman DiGiulian permitted him to approach the podium and give his testimony.

(Unidentified speaker) He voiced his dismay over the case's deferral noting his inconvenience for him to be present today. He stated that there was a sign posted advertising the public hearing this morning.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant had not performed the required notification and that none of the adjacent and contiguous property owners were mailed notices, therefore, a deferral was mandatory.

Chairman DiGiulian explained that the Board of Zoning Appeals was required by law to grant one deferral and that the applicant would be informed that his special permit application would be dismissed if all requirements were not made.

The unidentified speaker noted that he represented the homeowners association's position opposing the application.

Mr. Ribble suggested that the comments be sent to the Zoning Evaluation Division for the record.

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Page _____, January 27, 1998, (Tape 2), Scheduled case of:

9:00 A.M. G. NORMAN & JUDITH W. CHRISTENSEN, SP 97-S-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 10.3 ft. from rear lot line. Located at 6228 Ballsford Dr. on approx. 36,212 sq. ft. of land zoned R-C, WS. Springfield District. Tax Map 76-4 ((8)) 503.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. Judith W. Christensen, Agent, 2014 Georgian Lane, Morgantown, West Virginia, replied that it was.

Ms. Heidi Powell, Staff Coordinator, gave staff's presentation as contained in the Staff Report dated January 20, 1998.

Mrs. Christensen requested a modification which would allow the portion of a deck that is too close to the property line to remain. She pointed out that the error was in the building location and the deck was in the rear yard. The adjoining parcel was designated as open space which would not be developed, therefore there was no adverse impact on anyone.

Chairman DiGiulian called for speakers either in support or in opposition to the application and receiving no response, he closed the public hearing.

Mr. Kelley moved to approve SP 97-S-053 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated January 20, 1998.

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

G. NORMAN & JUDITH W. CHRISTENSEN, SP 97-S-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 10.3 ft. from rear lot line. Located at 6228 Ballsford Dr. on approx. 36,212 sq. ft. of land zoned R-C, WS. Springfield District. Tax Map 76-4 ((8)) 503. 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 28, 1998; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of a deck shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 20, 1997, revised through October 14, 1997, submitted with this application and is not transferable to other land.

Page 249, January 27, 1998, (Tape 2), G. NORMAN & JUDITH W. CHRISTENSEN, SP 97-S-053, continued from Page 248

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 unanimous vote of 6-0 with Mr. Dively not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 4, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page _____, January 27, 1998, (Tape 2), Scheduled case of:

9:30 A.M. ROBERT F. WHEELER, TRUSTEE, A 1997-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a storage yard and a junk yard in the R-1 District, all in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8270 Silverbrook Rd. on approx. 8.65 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-1 ((1)) 1. (DEF. FROM 8/5/97. DEF. FROM 10/28/97 AT APPLICANT'S REQUEST. NOTICES MUST BE DONE).

Chairman DiGiulian noted that there was a request for a 90 day deferral. He called upon the appellant's representative for a statement.

Royce A. Spence, Esquire, 7297-A Lee Highway, Falls Church, explained that inclement weather had hindered the appellant's good-faith efforts to complete the cleanup of his property, that 60 percent had been accomplished, and that additional time was necessary to complete the necessary tasks. In response to Mr. McPherson's question, he stated that 90 days was what Mr. Wheeler had requested.

William Shoup, Deputy Zoning Administrator, noting that the violation had been on-going for some time, did believe that Mr. Wheeler had made significant efforts to remove many of the items from the property and, although quite a bit more was necessary to bring the property into compliance, staff determined that it was appropriate to allow more time and concurred with the deferral request. Mr. Shoup explained that, the more debris that was removed, the issues would be narrowed and better able to be addressed if the appeal was to go forward. Staff suggested a deferral date of April 28, 1998, he submitted.

There being no objection, Mr. Ribble moved to defer the public hearing on Appeal, A 1997-MV-016, to April 28, 1998. The motion was seconded by Mr. Hammack and carried unanimously by a 6-0 vote with Mr. Dively not present for the vote.

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Page _____, January 27, 1998, (Tape 2), Action Item:

Consideration of Acceptance for Appeal filed by
Tom V. & Joan J. Richardson d/b/a Bull Run Stables

William Shoup, Deputy Zoning Administrator, explained that this appeal related to Mr. Richardson's efforts to obtain site plan approval for a boarding horse stable and it was an appeal of a Department of Environmental Management's (DEM) decision to require dedication along the frontage of his property to accommodate the proposed Tri County Connector. He reminded the Board that, at the January 6, 1998, meeting, they had accepted staff's request to defer this item's acceptance consideration in order to allow staff additional time to reconsider the dedication requirement. Mr. Shoup noted that DEM had reconsidered its request and had waived the dedication requirement as contained in the January 27, 1998 letter from Thomas Nelson, Branch Chief, Site Review, DEM. Pursuant to his discussions with DEM staff, Mr. Shoup stated that the letter constituted a waiver of dedication and based on that waiver, staff had received a letter from J. Randall Minchew, Esquire, the appellants' agent, withdrawing the appeal.

Mr. Hammack then moved to accept the withdrawal of appeal filed by Tom V. and Joan J. Richardson d/b/a

Page 200, January 27, 1998, (Tape 2), Action Item, continued from Page 249

Bull Run Stables.

The motion was seconded by Mr. Pammel and Mr. Ribble and carried unanimously by a 6-0 vote with Mr. Dively not present for the vote.

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Page 200, January 27, 1998, (Tape 2), Action Item:

Out-of-Turn Hearing Request
VC 94-D-008, Brenda Luwis/Satyendna Shrivastava

Susan Langdon, Chief, Special Permit and Variance Branch, explained that this was an application for a subdivision variance for one lot into two lots with an outlot and as there was insufficient information to determine how the delay in the applicants' application's acceptance adversely affected the applicants. Mr. Hammack moved to deny the Out-of-Turn Hearing Request. The motion was seconded by Mr. Pammel and carried unanimously by a 5-0 vote with Mr. Dively and Mr. Ribble not present for the vote.

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Page 200, January 27, 1998, (Tape 2), Action Item:

Additional Time Request to Establish the Use Approved by Special Permit
SP 96-M-034, Pentecostal Church of God, LaBiblia

In response to Mr. Hammack's question, Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant believed that a six-month extension was sufficient to make any changes necessary for the approval of their Non-RUP (Non-Residential Use Permit). Ms. Langdon said that staff suggested a longer time-frame than six months but it was declined by the applicant.

Mr. Hammack moved to approve the request for additional time. The new expiration date is May 20, 1998. The motion was seconded by Mr. McPherson and carried by a 5-0 vote with Messieurs Dively and Ribble not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Paula McFarland

Approved on:



Susan Langdon, Chief, Special Permit
& Variance Branch 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 3, 1998. 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 9:15 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 251, February 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MAX & MACIE RUBIN, VC 97-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.6 ft. and stairs 21.0 ft. from front lot line. Located at 1124 Marion Ave. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32.

Susan Langdon, Chief, Special Permits and Variance Branch, stated to the Board that the applicant submitted a letter requesting a deferral. When staff reviewed the applicant's application, it was determined that they needed a special permit in error for existing addition. The applicant requested a deferral in order to have additional time to file for the special permit and to allow that both the special permit and variance applications be heard at the same time. Staff suggested March 24, 1998, at 9:00 a.m.

Mr. McPherson made a motion to defer until March 24, 1998, 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 251, February 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SHIRLEY E. BEALOR & ELIZABETH A. HENDERSON, VC 97-B-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line. Located at 8607 Howrey Ct. on approx. 13,479 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((9)) 138.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shirley Bealor, 8607 Howrey Court, Annandale, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to allow the enclosure of an existing carport 10.5 feet from the side lot line. A variance of 1.5 feet was requested.

Shirley Bealor, the applicant, stated that she wanted to enclose her existing carport. She explained that her lot sloped and because of the sloping, she was unable to add a garage. She stated that her neighbors and the Civic Association supported her application.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 97-B-109 for reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SHIRLEY E. BEALOR & ELIZABETH A. HENDERSON, VC 97-B-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line. Located at 8607 Howrey Ct. on approx. 13,479 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((9)) 138. 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 3, 1998; and

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

1. The applicant has met the nine required standards for a variance.
2. The lot has some topographical conditions as shown in the photographs submitted by the applicant.
3. The request is minimal and would not change the character of the neighborhood if the carport is enclosed.

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

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

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

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

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

1. This variance is approved for the location of an attached garage shown on the plat prepared by Kenneth A Marceron, dated October 16, 1997, signed October 22, 1997, submitted with this application and is not transferable to other land.

Page ~~252~~ February 3, 1998, (Tape 1), SHIRLEY E. BEALOR & ELIZABETH A. HENDERSON, VC 97-B-109, continued from Page ~~251~~

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 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 February 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page ~~253~~ February 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. IRA WAINLESS, VC 97-S-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in a front yard. Located at 8149 Ridge Creek Wy. on approx. 10,916 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 89-4 (24)) 90A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ira Wainless, 8149 Ridge Creek Way, Springfield, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a 6 foot high fence in the front yard of a corner lot.

Ira Wainless, the applicant, stated that his lot is very narrow and that he did not have many places to build. The only road leading into the community wraps around most of his property which renders the area a front yard. The stub street perpendicular to the main road is going to be developed which will put two main roads adjacent to his property. Mr. Wainless stated that strict application of the Ordinance would cause an undue hardship in that it would prevent him from having reasonable use of the land. He stated that to ensure the safety of his children, he needed a 6 foot fence since a 4 foot fence is not high enough to prevent climbing.

There were no speakers either in support or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. McPherson questioned whether the homeowner's association had any restrictions on fences. Mr. Wainless stated that they did not.

Mr. Pammel made a motion to approve VC 97-S-111 for reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

IRA WAINLESS, VC 97-S-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in a front yard. Located at 8149 Ridge Creek Wy. on approx. 10,916 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 89-4 (24)) 90A.

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 3, 1998; and

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

1. The applicant presented testimony before the Board of Zoning Appeals and as stated, he has complied with the nine required standards for a variance.
2. The lot is a corner lot with a very unusual configuration with very little depth to the rear of the property.
3. The applicant proposed that the 6 foot fence be set back a considerable distance from the stub street that will eventually be constructed to the property to the south.
4. The applicant only requested that he be allowed to use a portion of his property for a play area for his children.
5. The application is a reasonable request.

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

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

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

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

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

1. This variance is approved for the location of a 6 foot high fence shown on the plat prepared by Kenneth

W. White, dated September 29, 1997, 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 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 February 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 255, February 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. HOA DINH NGO, VC 97-L-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.2 ft. from rear lot line. Located at 7217 Neuman St. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((4)) 7. (Concurrent with SP 97-L-056).

9:00 A.M. HOA DINH NGO, SP 97-L-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side lot line and 0.4 ft. from rear lot line. Located at 7217 Neuman St. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((4)) 7. (Concurrent with VC 97-L-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. Hoa Dinh Ngo, 7217 Neuman Street, Springfield, Virginia, replied that it was.

Jennifer Smolko, Intern, Special Permits and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit for reduction to the minimum yard requirements based on an error in building location, to permit an accessory structure to remain 4 feet from a side lot line and 0.4 feet from the rear lot line. The amount of error is 16 feet and 10.6 feet respectively. The applicant also requested approval of a variance to permit construction of an addition 21.2 feet from the rear lot line. A variance of 3.8 feet was requested.

Mr. Ribble noted that the plat in the staff report indicated that the property was located in the Mt. Vernon District and in the Lee District and wanted to know the correct location. Staff indicated that it was located in the Lee District.

Hoa Dinh Ngo, the applicant, stated that his house was very old and that the roof needed to be repaired. He wanted to build an addition to accommodate his family. He has six children. Mr. Ngo stated that it is a custom for him and his family that his home be square shaped and not the shape of a rectangle. They consider it bad luck. He wanted to reshape the home into a square shape. He also stated that the shed in the back was there when he purchased the home and that it was difficult to remove. He asked that the Board allow the shed to remain where it was.

Mr. McPherson wanted to know how many sheds were in the yard, what they were used for and whether they were there when Mr. Ngo purchased the home. Mr. Ngo stated that there were two sheds in the yard and that they were used for storage. He stated that both sheds were there when he purchase the house.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to approve VC 97-L-112 and SP 97-L-056 for reasons stated in the resolutions.

Mr. McPherson asked that the minutes reflect the findings of facts as reflected in the staff report and the statements of the applicant. He also stated that the special permit proposal was for a reduction to minimum yard requirements based on error in building location to permit an accessory structure to remain 4.0 feet from the side lot line and 0.4 feet from the rear lot line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOA DINH NGO, SP 97-L-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side lot line and 0.4 ft. from rear lot line. Located at 7217 Neuman St. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((4)) 7. (Concurrent with VC 97-L-112). 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 3, 1998; and

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

1. The accessory use is limited. It is a minor use even though it is close to the rear lot line.
2. There was a letter submitted from Mr. George indicating that he is not opposed to the application.
3. The applicant has met the necessary standards for the Board to approve the special permit request.

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

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

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other

properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of the accessory storage structure shown on the plat prepared by L.S. Whiter on May 20, 1991, recertified on October 23, 1992, revised by Toan T.V. Nguyen on October 16, 1997, 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 provision of any applicable ordinances, regulations, or adopted standards.

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 February 11, 1998. 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

HOA DINH NGO, VC 97-L-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.2 ft. from rear lot line. Located at 7217 Neuman St. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((4)) 7. (Concurrent with SP 97-L-056). 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 3, 1998; and

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

1. The applicant has met the nine required standards for a variance.
2. The proposed addition does not come any closer to the rear lot line.
3. It will be a substantial improvement to the property.
4. The application is consistent with the standards required for the passage of a variance resolution.

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

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

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for the location of the two-story addition and attached garage shown on the plat prepared by L.S. Whiter on May 20, 1991, revised on October 23, 1992, recertified by Toan T.V. Nguyen on October 16, 1997, 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. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page ~~258~~, February 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 97-P-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.7 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A.

Chairman DiGiulian indicated that it had been stated that the notices were not in order. Susan Langdon, Chief, Special Permits and Variance Branch, stated that the applicant failed to do his notices. Staff suggested a deferral date of March 10, 1998.

Mr. Fattahi, the applicant, stated that he did not receive the notice package. Jennifer Smolko, Intern, Special Permits and Variance Branch, stated that Mr. Fattahi told her he did not receive the notice package but that he now understood what the procedures were and that he would pick up the new package after the hearing.

Mr. McPherson made a motion that VC 97-P-117 be deferred to the date suggested by staff. The motion was seconded by Mr. Dively which carried by a vote of 5-0. Mr. Hammack was not present for the vote.

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Page _____, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES B. & ROSE A. ROBBINS, VC 97-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures and uses to exceed 30% of the minimum required rear yard coverage. Located at 1706 Hollinwood Dr. on approx. 22,558 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((11)) 45. (Concurrent with SP 97-V-059).

9:00 A.M. CHARLES B. & ROSE A. ROBBINS, SP 97-V-059 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 6.0 ft. from rear lot line and 0.3 ft. and 1.4 ft. from side lot lines, and addition to remain 13.2 ft. from side lot line. Located at 1706 Hollinwood Dr. on approx. 22,558 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((11)) 45. (Concurrent with VC 97-V-121).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Royce A. Spence, 7297-A Lee Highway, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a special permit to allow reduction in the minimum yard requirements based on an error in building location to permit an accessory structure to remain 6 feet from the rear lot line, 0.3 feet from a side lot line, and 1.4 feet from the other side lot line. He also requested that an addition remain 13.2 feet from a side lot line. The amount of the errors is 5.8 feet, 14.7 feet, and 13.6 feet, and 1.8 feet respectfully. The applicant also requested approval of a variance to permit structures and uses to cover 63 percent of the area of the minimum required rear yard.

Royce Spence, Attorney for the applicant, stated that when reviewing the plat for the sun room, it was discovered that the contractor built the structure 1.8 feet closer to the side line than he should have. The contractor apparently took his measurements from a fence that was off the lot line rather than the property line. The pool house and shed were built by previous property owners in 1972. The pool house and shed were starting to deteriorate so the owners decided to tear them down and started to construct a new shed and pool house in the same area with the same measurements. This caused some objection from one of the neighbors. Inspectors came out to the property from Zoning Enforcement and inspected the property and halted construction. Mr. Spence stated that because of the location of the piping that runs from the pool house to the pool and the other improvements to the yard, there was no other practical place to put the shed other than in the back yard. The lot is pie-shaped.

With respect to the variance, the height limit and the rear yard coverage is exactly the same as it had been since 1972. There had been no complaints from any of the neighbors.

Mr. McPherson asked to see some photographs of the shed before it was torn down. Mr. Spence submitted an earlier plat dated 1992.

There were no speakers in support of the application.

Marilyn Colclough, 1702 Hollinwood Drive, Alexandria, Virginia, opposed the application stating that she called the Zoning office to find out what the applicant was doing and in the process found out that the applicant had not filed for a building permit. Construction on the building was to be halted until a permit was obtained but according to Ms. Colclough, the applicant continued to do construction during the month of October. Ms. Colclough stated that her main concern was the shed in the applicant's yard that she is able to see over her

Page ~~3100~~ 3100, February 3, 1998, (Tape 1), CHARLES B. & ROSE A. ROBBINS, VC 97-V-121 and CHARLES B. & ROSE A. ROBBINS, SP 97-V-059, continued from Page ~~307~~ 307

fence. She claimed that it may affect her property values if she ever decided to sell her property.

Mr. Ribble asked staff to shed some light on the outcome of the calls Ms. Colclough placed concerning the construction. Staff stated that a Notice of Violation was issued to the applicant which was indicated on Page 2 of the staff report under "Background".

There were no other speakers in opposition to the application.

Mr. Spence in his rebuttal stated that construction was stopped on the building but that the process took so long that the site began to deteriorate. The applicant decided to protect what had already been done, painted the structure and put in a door. Mr. Spence stated that Ms. Colclough said that she did not realize the shed was there during the years in which she had been living there, which should indicate that the applicant is in compliance with the conditions that the structure not affect adjoining properties.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 97-V-121 and SP 97-V-059 for reasons stated in the Resolution.

Mr. Ribble stated that he did not feel that the applications were harmful to Ms. Colclough's yard, that it would not affect the resale of her property, and that the applicant's property is well maintained.

Mr. Pammel suggested that the building be painted or treated in such a manner as to blend in with the surroundings which should address the neighbor's concerns, and that the suggestion be added as one of the Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES B. & ROSE A. ROBBINS, VC 97-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures and uses to exceed 30% of the minimum required rear yard coverage. Located at 1706 Hollinwood Dr. on approx. 22,558 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((11)) 45. (Concurrent with SP 97-V-059). 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 3, 1998; and

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

1. The applicant has met the nine standards required for a variance.
2. The lot is pie-shaped and the placement of the house on the property results in a small 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 **APPROVED** with the following limitations:

1. This Variance is approved for the location of a poolhouse/shed, pool, and brick patio shown on the plat prepared by Donald E. Shultz, dated August 1, 1997 and revised through October 16, 1997 submitted with this application and is not transferable to other land.

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

Mr. Dively seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. 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 February 11, 1998. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES B. & ROSE A. ROBBINS, SP 97-V-059 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 6.0 ft. from rear lot line and 0.3 ft. and 1.4 ft. from side lot lines, and addition to remain 13.2 ft. from side lot line. Located at 1706 Hollinwood Dr. on approx. 22,558 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((11)) 45. (Concurrent with VC 97-V-121). 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 3, 1998;

and

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

1. The non-compliance was done in good faith.
2. The error exceeds ten percent.

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

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

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

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

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

1. This Special Permit is approved for the location of a poolhouse/shed and sunroom shown on the plat prepared by Donald E. Shultz, dated August 1, 1997 and revised through October 16, 1997 submitted with this application and is not transferable to other land.
2. The poolhouse/shed must be painted or treated in such a manner as to blend in with the surroundings

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 5-0-1. Mr. Hammack abstained from the vote. 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 February 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MARK CANOYER, SP 97-B-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.0 ft. from side lot line. Located at 9309 Briarwood Pl. on approx. 18,443 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((13)) 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. Mark Canoyer, 9309 Briarwood Place, Fairfax, Virginia replied that it was.

Susan Langdon, Chief, Special Permits and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of a special permit in error to permit an addition, a deck, with a privacy fence greater than 4 feet in height to remain 0 feet from a side lot line with total side yards of 12.2 feet. A variance of 8 feet was requested to the side yard requirement and a variance of 6.8 feet was requested to the total side yard requirement.

Mark Canoyer, the applicant, stated that the deck was in its current location when he purchased the property. There were no objections from neighbors to his application. The removal or modification of the deck would be a severe financial burden for Mr. Canoyer because it supports a 500 gallon hot tub.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to approve SP 97-B-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK CANOYER, SP 97-B-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.0 ft. from side lot line. Located at 9309 Briarwood Pl. on approx. 18,443 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((13)) 36. 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 3, 1998; and

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

1. The property was purchased in good faith.
2. The structure is well constructed.
3. It would be a tremendous hardship to move the structure.

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

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;

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

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

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

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

- 1. This Special Permit is granted only for the location of the addition (deck with privacy fence) shown on the plat prepared by Andrew V. Wyczalkowski dated August 1, 1996 as revised through November 12, 1997, submitted with this application and is not transferable to other land.

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.

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 February 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. AMERICAN LEGION, INC., POST 176, SPRINGFIELD, VIRGINIA, A 1997-LE-027, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a portable sign in violation of Par. 2 Sect. 12-104 of the Zoning Ordinance. Located at 6520 Amherst Ave. on approx. 39,241 sq. ft. of land zoned C-2, HC, SC. Lee District. Tax Map 90-2((1))5A. (Moved from 12/2/97) FOR NOTICES.

William Shoup, Deputy Zoning Administrator, stated that there was a request for deferral. The appeal involved a sign violation and as noted in his January 26, 1998 memo, the issue could be resolved with the installation of a permanent free-standing sign in which the appellant indicated they would install. Mr. Shoup stated that he concurred with the deferral and suggested the morning of April 2, 1998.

Edwin Dentz, Judge Advocate of Springfield Post 176, stated that he concurred with staff's recommendation. He stated that given that Amhurst Avenue is now a main thoroughfare, a free-standing sign would be appropriate.

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

Mr. Hammack made a motion to defer the case until April 2, 1998. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Request for Intent to Defer Appeal A 1997-PR-022
Nationsbanc Mortgage Corporation

Gregory Britto, attorney for the appellant, stated that the appellant requested a deferral in order to have both the appeal on the notice of violation and the variance heard on the same day. He stated that staff suggested May 12 if the Board was so inclined to grant the deferral. Mr. Britto stated that he preferred the 5th or the 19th, that he had a conflict on the 12th. He stated that the variance application should be resolved because it had been filed and the property had been foreclosed, that they now owned the property and had standing to do the variance application.

Mr. Shoup stated that he deferred to the Board's judgement as to whether the appeal should be deferred. He did indicate that the appeal was before the Board in September of '97 and was deferred to February 24 to allow Nationsbanc to file a variance. It was determined that Nationsbanc did not have standing to pursue the variance.

Chairman DiGiulian asked staff to give him the date of the Notice of Violation. Mr. Britto stated that it was June 12, 1997. Mr. Shoup concurred.

Mr. Dively asked the status of May 5 or May 19 as possible hearing dates. Chairman DiGiulian stated his concern that it had been close to one year since the Notice of Violation and that there were people that were being damaged by the situation.

Dennis Rice, owner of the property next door to the appellant, stated that he opposed further delay on the appeal. He stated that Nationsbanc's first defense was that they did not own the property, but that they filed for a variance and found out that they could file. Mr. Rice claims that the appellant had known all along what was required of them. He stated that the property was foreclosed and new owners stepped in but that they were the same owners with a new name. He stated that he could not develop his property because of the condition of the appellant's property. There are trees that have fallen on the house. The power lines are down. There are trees growing out of the gutters and trash all over the property. He stated that he felt that the owners should have stepped in and cleaned up the property, that the property had been vacant for two years. He also stated that he had lost four contracts because of the abandoned house.

Mr. Hammack asked staff, if the property was abandoned, how was there a newly created lot line that put the property in violation. Mr. Shoup stated that there was a resubdivision that occurred in the Pine Ridge Section 4 Subdivision when the lot lines were redrawn. Mr. DiGiulian stated that he thought that the County approved the subdivision with the condition that the house be removed. Mr. Shoup stated that it was not shown on the subdivision plat that the house was going to be removed, however, there was a grading plan that came in that showed that the house was going to be removed.

Mr. McPherson asked staff who the appellant was. Mr. Shoup stated that the appellant was Nationsbanc Mortgage Corporation, that they held the first priority deed of trust, that they were deemed to be an aggrieved party at the time of the submission of the appeal. The title owner is Lockwood Associates, Robert D. Kelley and Marie T. Kelley.

Mr. Hammack asked staff if there were an earlier date that the appeal could be heard other than the May date. Mr. Shoup replied that the application for the variance was submitted on January 29 and that staff was in the process of reviewing it. If the application was in good shape, he stated, May would be the next possible date.

Mr. Dively asked Mr. Rice if the problem for him was the maintenance and the abandoned nature of the property or was it the variance. Mr. Rice stated that there were several problems. The setback is in dispute. The property was to be torn down and it was not done. The issues had been going on for quite some time and the appeal had been postponed several times. The appellant had taken no steps to clean the property. Mr. Rice showed the Board photographs of the condition of the property. According to Mr. Rice, the house on the property is a huge two story rambler that is 9 foot 9 inches from his property line, which Mr. Rice feels is 15 feet closer than it should be due to a restrictive covenant that requires a 25 foot setback.

Mr. Hammack asked staff if the County had to approve resubdivisions. Staff replied that it did. Mr. Hammack stated that Nationsbanc had a first trust and wanted to know from staff if the trustees had to sign off on any interest they had in the property. Mr. Shoup stated that he didn't think Nationsbanc was involved with the

Page 240, February 3, 1998, (Tape 1), Action Item, continued from Page 235

property at the time of subdivision. Chairman DiGiulian wanted to know if Nationsbanc had the trust at the time Mr. Rice purchased the two lots. It was answered in the affirmative. Mr. Ribble stated that Nationsbanc was the successor, so they knew the terms of the resubdivision.

Mr. Dively asked Mr. Britto whether the appellant was planning to sell the property and what they planned to do to get the property in shape. Mr. Britto stated that they did plan to sell and that he was going to direct the appellants to clean the property immediately.

Mr. DiGiulian stated that his concern was that if the case was deferred again, it would be almost one year that the appeal had been ongoing. He stated that the house should have been torn down. He stated that he did not think that the Board should come back after the fact and grant a variance to let the house remain.

There were no other speakers to speak to the deferral. Chairman DiGiulian closed the public hearing.

Mr. McPherson made a motion to deny the Request for Intent to Defer. The motion was seconded by Mr. Pammel which carried by a vote of 5-0-1. Mr. Dively voted, nay. Mr. Kelley was absent from the meeting.

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Page 240, February 3, 1998, (Tape 1), Action Item:

Approval of January 27, 1998, Resolutions

Mr. Hammack stated that staff indicated that Condition 3 was reworded on the Blue case and stated that he had no objection to it.

Mr. Ribble made a motion to approve the January 27, 1998, Resolutions. There was no second. The motion 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 10:20 a.m.

Minutes by: Denise Snyder, Deputy Clerk

Approved on:


Susan Langdon, Chief

Special Permits and Variance Branch


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 10, 1998. 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. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 204 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. SPRINGFIELD CAMPUS LLC, VC 97-L-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yards. Located at N. side of Franconia-Springfield Pkwy. at intersection with Hooes Rd., on approx. 91.90 ac. of land zoned R-3. Lee District. Tax Map 90-1 ((1)) order 58 pt., 59 pt., 60, 60A, 61 pt.

Chairman DiGiulian stated that the notices were not in order for this case. Staff noted that a deferral date was discussed with the applicant and suggested a deferral to March 24, 1998.

There was no one in the audience to speak to the deferral and Mr. McPherson move to defer the case to March 24, 1998. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble, Mr. Dively, and Mr. Hammack were not present for the vote.

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Page 207 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. LINCOLN P. BLOOMFIELD, JR. & REBECCA A. MEDEN, VC 97-V-119

The applicants were not present at the time the case was called and Mr. Kelley moved that the case be passed to the end of the regularly scheduled agenda. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble, Mr. Dively, and Mr. Hammack were not present for the vote.

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Page 209 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. KENT R. CHRISTENSEN, VC 97-M-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from front lot line and 7.5 ft. from rear lot line. Located at 6145 Beachway Dr. on approx. 13,666 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 913.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kent R. Christensen, 6145 Beachway Drive, Falls Church, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, gave staff's presentation as outlined in the staff report dated February 3, 1998. The applicant requested approval of a variance to permit a two-car garage addition, which was an extension and enclosure of an existing carport with a second story room above, to be located 27.8 feet from a front lot line and 7.5 feet from rear lot line. A minimum front yard of 35 feet was required in the R-2 District; therefore, a variance of 7.5 feet was being requested. Appendix A, 2-4 of the Zoning Ordinance states that for single family detached dwellings in the R-E through R-8 Districts, the minimum required rear yard on a corner lot may be equal but shall not be less than the minimum side yard requirement. The minimum side yard requirement in the R-2 District was 15 feet; therefore, a variance of 7.5 feet was being requested.

Mr. Christensen stated that he acquired the property in good faith with the intent of raising his family at this location. He said he proposed to replace an existing two-car carport with a two-car garage with some rooms on top.

Mr. Christensen stated that he had an extraordinary situation with his property because his lot was a corner lot with two front yard setbacks. He said his house was set at an angle at the back corner of the lot, and he would run into problems with Zoning no matter where he built on the lot.

Mr. Christensen further stated that the current carport was enclosed by a six-foot high fence that came 6.4 feet from the rear yard property and with the addition, the fence would be pulled back to 7.5 feet from the property line. He said if the variance was not granted, it would restrict his use of the property and cause undue hardship, since the current location was the only appropriate location for the addition. He also stated that the vegetation would remain, and the addition would be in harmony with the intended spirit and use of the variance.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that in looking at this case, it was a classic example of a corner lot where the house had been located, it was not parallel to either of the property lines and that invariably created problem for the Board. He said the hardship was justified and he moved to approve VC 97-M-122 for the reasons stated in the Resolution.

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

KENT R. CHRISTENSEN, VC 97-M-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from a front lot line and 7.5 ft. from a rear lot line. Located at 6145 Beachway Dr. on approx. 13,666 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 913. 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 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony before the Board of Zoning Appeals on this date.
3. The applicant has met the prescribed nine criteria for the granting of a variance.
4. This a classic example of a corner lot where the house is not parallel to either of the property lines; this invariably creates a problem for this Board.
5. The hardship is 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a two car garage addition with second story room above shown on the plat prepared by Kenneth W. White, dated June 24, 1997, revised through October 29, 1997, 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. Dively abstaining. 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 February 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 209, February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ANDREE DUVARNEY, VC 97-D-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.6 ft. from a side lot line and 29.9 ft. from a front lot line, and fence higher than 7.0 ft. to remain in rear yard. Located at 6329 Halsey Rd. on approx. 12,267 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 103. (Concurrent with SP 97-D-058).

ANDREE DUVARNEY, SP 97-D-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.3 ft. from a side lot line and accessory structure to remain 0.7 ft. from a rear lot line and 1.7 ft. from a side lot line. Located at 6329 Halsey Rd. on approx. 12,267 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 103. (Concurrent with VC 97-D-

120).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andree Duvarney, 6239 Halsey Road, McLean, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, gave staff's presentation as outlined in the staff report. The applicant requested a special permit for an error in building location to permit an addition to the dwelling to remain 13.3 feet from a side lot line and a deck with 9 foot-high privacy screening to remain 0.7 feet from a rear lot line and 1.7 feet from a side lot line. A minimum side yard of 15 feet was required in R-2 District; therefore, the error for the addition was 1.7 feet. Section 10-104 of the Zoning Ordinance stated that the minimum rear yard requirement for the deck was 9.0 feet and the minimum side yard was 15.0 feet; therefore, the errors were 8.3 feet and 13.3 feet respectively. Staff pointed out that there was an error in the staff report which stated that the height of the privacy screening on the deck was 8.0 feet and that therefore, the minimum rear requirement was 8.0 feet; the correct figure was 9.0 feet.

The applicant had also requested approval of a variance to permit construction of an addition of 8.6 feet from a side lot line and steps 29.9 feet from a front lot line and to permit a 7.5 feet fence to remain in the rear yard. A minimum side yard of 15.0 feet was required in the R-2 District; therefore, the variance requested for the addition was 6.4 feet. A minimum front yard of 35.0 feet with a permitted extension of 5.0 feet was required for the steps in the R-2 District; therefore, a variance of 0.1 foot was requested. Section 10-104 of the Zoning Ordinance stated that the maximum allowed height for a fence located in a rear yard was 7.0 feet; therefore, a variance of 0.5 feet was being requested.

Ms. Duvarney stated that the special permit was being requested to allow a reduction to the minimum yard requirements, based on an error in building location, to permit her home to remain 13.3 feet from a side lot line, and an accessory structure to remain 0.7 feet from the rear lot line and 1.7 feet from a side lot line. She said the accessory structure was a deck with a privacy screen attached and the proposed use was to allow her dining room and kitchen to remain the same, as well as to allow the rear deck and privacy screen to remain. She said the use was consistent with the use of a private residence, and the architecture of the portions subject to the special permit were consistent with the remaining portion of her home. She said the use would be in harmony with the comprehensive plan and the general purpose and intent of the zoning regulations would not adversely affect future developments of any property.

Ms. Duvarney stated that she purchased the property in good faith and that the error in building location, which exceeded 10 percent, was no fault of hers. She said to force compliance of the minimum yard requirements would create a hardship and the reduction would not result in an increase in density or floor area ratio.

Ms. Duvarney stated that the variance was to permit construction of an addition 8.6 feet from a side lot line, and steps 29.9 feet from a front lot line and a fence to remain in the back yard. She said she wanted to add a two-car garage and a bedroom with bathroom to accommodate her elderly mother. She also said the property was narrow and long.

Mr. McPherson asked the applicant if the rear deck existed when she acquired the property and was the proposed addition a one-story addition and was there a basement.

The applicant said she acquired the property about two years ago and the rear deck existed at the time. She said the addition was a one-story addition and there would probably be a crawl space underneath.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. McPherson stated that the two parts of the special permit were nominal. He said one was an existing problem with the corner of the house that had been there for some time; the other was a deck that was in the rear yard and close to the back lot line. He said he did not think that this caused any significant problem. He moved to approved SP 97-D-058 for the reasons stated in the Resolution.

Mr. McPherson stated that the property was a Franklin Park property and there were other lots in the vicinity that had similar variances. He said the topography of the site was such that it could not be developed any

other way, and while it did essentially double the footprint, it was reasonable under the circumstances. He said the applicant made a good case. He moved to approved VC 97-D-120 for the reasons stated in the Resolution.

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

ANDREE DUVARNEY, VC 97-D-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line and 29.9 ft. from front lot line and fence higher than 7.0 ft. to remain in rear yard. Located at 6329 Halsey Rd. on approx. 12,267 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 103. (Concurrent with SP 97-D-058). 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 10, 1998; and

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

1. The applicant is the owner of the land.
2. This is a Franklin Park property.
3. There are other lots in the vicinity that have had similar variances.
4. The topography of this site is such that it could not be developed in any other way.
5. While this does essentially double the footprint of the house and is a significant increase, this is reasonable under the circumstances.
6. The applicant has made a good case.

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

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

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

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

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

1. This variance is approved for the location of the room addition, steps, and fence shown on the plat prepared by Kenneth W. White, dated October 29, 1997, revised November 12, 1997, 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. 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 February 18, 1998. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREE DUVARNEY, SP 97-D-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.3 ft. from side lot line and accessory structure to remain 0.7 ft. from rear lot line and 1.7 ft. from side lot line. Located at 6329 Halsey Rd. on approx. 12,267 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 103. (Concurrent with VC 97-D-120). 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 10, 1998; and

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

1. There is an existing problem with the corner of the house that has been there for some time.
2. The deck in the rear yard is close to the back yard line but does not present any significant problem.

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:

Page 213 February 10, 1998, (Tape 1), ANDREE DUVARNEY, VC 97-D-120 and ANDREE DUVARNEY, SP 97-D-058, continued from Page 272

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

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

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

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

1. This Special Permit is approved for the location of a dwelling and deck shown on the plat prepared by Kenneth W. White, dated October 29, 1997, revised November 12, 1997, submitted with this application and is not transferable to other land.

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

Mr. Pammel 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 February 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 213 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. KINGSTOWNE E & F L.P., SPA 95-L-072 Appl. under Sect(s). 5-403 of the Zoning Ordinance to amend SP 95-L-072 for health club to permit an increase in floor area and modification to development conditions. Located at 5825 Barclay Dr. on approx. 7.94 ac. of land zoned I-4. Lee District. Tax Map 91-2((1))31. (DEF. FROM 1-13-98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marie Kosmocos, 7816 O'Dell Street, Springfield, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested an amendment to an approved special permit for a health club

within 15,000 square feet of tenant space in an existing warehouse development in order to increase the area to 20,649 square feet, and increase the maximum occupancy of the health club to 96 persons. The proposed increase in occupancy would require 38 parking spaces within the 240 space parking lot which served the warehouse. Staff's evaluation addressed all land uses, transportation, and environmental issues with the adoption of the development conditions contained in the staff report addendum, which reflected the increase in occupancy to 96 persons, as well as minor revisions to the language of the conditions requiring the provision of adequate parking for all uses on the site. Staff recommended approval subject to the revised conditions.

The applicant stated that the leasable space next to hers was an end unit in the same building, and she would like to expand the floor area in order to spread out the exercise equipment for current customers' convenience. She said there were seven parking spaces available to the end unit, and since the Ordinance allowed three persons per parking space, she would like to increase the occupancy by 31 additional persons.

The applicant asked to change the conditions listed in the addendum that read "permit shall not be transferable," to read "transferable" should she desires to sell the business. She asked that the Board waive the eight-day waiting period, if the special permit amendment were approved.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approved SPA 95-L-072 for the reasons stated in the Resolution.

Mr. Pammel stated that it was the Board's policy that the special permit amendment stayed with the applicant, and if there was a change, the applicant would have to appear before the Board.

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

KINGSTOWNE E & F L.P., SPA 95-L-072 Appl. under Sect(s). 5-403 of the Zoning Ordinance to amend SP 95-L-072 for health club to permit an increase in floor area and modification to development conditions. Located at 5825 Barclay Dr. on approx. 7.94 ac. of land zoned I-4. Lee District. Tax Map 91-2((1))31. 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 bylaws of 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 10, 1998; and

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

1. The applicant is the lessee of the property.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5825 Barclay Drive, 20,649 square feet out of 7.94 acres, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by James H. Scanlon for The BC Consultants, dated October 31, 1995, as revised through October 21, 1997, 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 not commence prior to 5:30 a.m. nor extend past 10:00 p.m. Monday through Friday, and shall not commence prior to 8:00 a.m. nor extend past 8:00 p.m., Saturday through Sunday.
6. The maximum occupancy load shall be limited to 96.
7. The maximum number of employees on site at any one time shall be limited to 6.
8. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance, as determined by the Zoning Permit Review Branch of Fairfax County. If required by the ZPRB, prior to issuance of the Non-Residential Use Permit, a parking tabulation shall be submitted to and approved by DEM which shows that the required parking for all uses can be provided in the 7.94 acre site, or the size of the proposed use shall be limited to provide adequate parking.
9. Barrier requirements shall be waived along all boundary lines of Parcel 31.

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 by issuance of a new Non-Residential Use Permit 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. McPherson seconded the motion which carried by a vote of 6-0.

Mr. Ribble moved to waive the 8-day waiting period. Mr. McPherson and Mr. Pammel seconded the motion. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 275 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. RENATO TOVAR & CARMEN REIS, VC 97-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the minimum required front yard of a lot containing less than 36,000 sq. ft. Located at 4714 Walney Knoll Ct. on approx. 19,563 sq.

ft. of land zoned R-2 and WS. Sully District. Tax Map 44-4 ((7)) 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. Carmen Reis, 4717 Walney Knoll Court, Chantilly, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicants requested a variance to permit an accessory structure, which was an in-ground pool, to be constructed in the front yard of a through lot containing less than 36,000 square feet. The Zoning Ordinance prohibits accessory structures except basketball standards, statues, or flag poles be located in front yard of lots containing less than 36,000 square feet.

Ms. Reis stated that when she purchased her home, she had the intention of putting a swimming pool in the back yard, and she signed a contract last year with Louis Architect and was issued a permit by Fairfax County dated July 27, 1997. She said the permit, Number 97199B0390, was put on hold because it was determined that her lot was a through lot, and they did not have a back yard, but two front yards.

Ms. Reis stated that the second front yard on Walney Road was fenced in by the developer and she had no access to her home, neither was there a driveway or sidewalk that lead to her house, nor was there a street number on that part of the house but there was a deck. She said her neighbors had no objection to her building a pool and the pool would not be visible from the outside. The applicant stated that she had the homeowners association's approval for a privacy fence.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Dively stated that this was an extraordinary situation where there were two front yards, and the front yard where the applicant wanted to put her pool was what most people would call their back yard. He said this was an unusual enough situation to justify the variance. He moved to approved VC 97-Y-116 for the reasons stated in the Resolution.

Mr. Pammel requested that an amendment be added to correct the situation of double frontage lots where a situation as this case would not require a variance. Mr. McPherson said he agreed with Mr. Pammel's request. He said what the applicant learned was that what she thought was her back yard was actually her front yard.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RENATO TOVAR & CARMEN REIS, VC 97-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the minimum required front yard of a lot containing less than 36,000 sq. ft. Located at 4714 Walney Knoll Ct. on approx. 19,563 sq. ft. of land zoned R-2 and WS. Sully District. Tax Map 44-4 ((7)) 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 February 10, 1998; and

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

1. The applicant is the owner of the land.
2. This is an extraordinary situation where they have two front yards.
3. The front yard where they want to put the pool in is what most people would consider their back

4. yard.
5. Given those circumstances, it is considered an unusual enough situation to justify the granting of the variance.

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

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

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

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

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

1. This variance is approved for the location of a swimming pool shown on the plat prepared by Patton Harris Rust and Associates, dated October 10, 1997, 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. 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 February 18,

1998. This date shall be deemed to be the final approval date of this variance.

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Page 278 February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. PITTMAN AND ARCHIVES INTERNATIONAL, LTD., VC 97-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.6 ft. from edge of existing easement line. Located at terminus of Judd Ct. on approx. 38,328 sq. ft. of land zoned R-1. Dranesville District. Tax Map 10-2 ((1)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. David L. Pittman, 20766 Ridge Haven Terrace, Sterling, Virginia, replied that it was. Mr. Dively asked to be excused from the hearing because he had a business relationship with one of the applicants.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a single family dwelling 11.6 feet from the edge of the existing easement line which was the cul-de-sac turn-around for Judd Court. The minimum required front yard was 40.0 feet; therefore, a variance of 28.4 feet was being requested.

Mr. Pittman stated that he had been waiting for five months in order to build a home on this property which had an exceptionally shallow characteristic. He said Toll Brothers bought an easement from the current owner and placed a cul-de-sac right in the middle of the lot which made the property unique.

Mr. Pittman stated that the lot was currently zoned R-1 and it was impossible to build anything except an a-frame log cabin and this produced a hardship because the 40-foot front yard was too restrictive, and not comparable to his neighbors who all had a 20-foot front yard. He asked that the variance be applied to the lot to allow him to build like the neighbors who were directly beside him. Mr. Pittman stated that this would not be a detriment to homeowners and the character of the zoning district would not be changed. He said it would be in harmony with the neighborhood.

Mr. Pittman referred to a letter he received from the Assistant Zoning Administrator dated September 8, 1997, which stated that the lot was buildable. He said the lot had access to sewer, gas, water, and had a paved cul-de-sac. Mr. Pittman stated that current owner had permission to build on the lot due to the permit process, but because of the restrictions on R-1 versus R-3 cluster of the neighbors, he had 19 feet in which to build only a log cabin. He said he wanted to build a home that was comparable to the other homes in the neighborhood, and since this was the only lot in the neighborhood like this, granting the variance would prevent an eye sore.

Chairman DiGiulian asked Mr. Pittman if he had seen the two letters of opposition.

Mr. Pittman replied that he had not seen the letters, but that he had spoken with the people and they had seen the plat. He also said that water run off will not be a problem.

Mr. Pittman stated that the 20-foot front setback from his neighbors lot did not allow him to go in any direction, and because he could not move the cul-de-sac, this was the only place the house would fit.

Chairman DiGiulian called for speakers in support.

Hector Santana, 1514 Judd Court, Lot 84 in Herndon Chase, Herndon, Virginia, said Toll Brothers did not tell them they had a deal with the original owners to build a cul-de-sac. He said he obtained signatures of 14 residents who all supported the building of the house.

Richard Rowe, 1352 Grant Street, Herndon, Virginia, said the home would be in harmony with those in the neighborhood and would not be a detriment to any adjacent homeowners. He said the house would be moved to the middle of the lot.

There was no one else to speak in support and Chairman DiGiulian called for speakers in opposition.

Elizabeth Harrison, 1566 Dranesville Road, Herndon, Virginia, said her back fence was the property line for three quarters of the applicant's lot. She referred to a letter that was faxed to the Board last week that addressed the private agreement between the applicant and Toll Brothers which resulted in construction of a cul-de-sac in accordance with the Virginia Department of Transportation (VDOT) standards.

Ms. Harrison said the cul-de-sac was introduced without any notification of public hearing usurping the only buildable site on a steeply sloping lot. She asked that Board members making the decision walk over the property. She also referred to a November 4, 1997, letter from the applicant to the BZA, which stated that the lot was a shallow and precipitous lot. Ms. Harrison stated that the 40-foot setback rendered the lot unbuildable for any size dwelling.

Ms. Harrison said the strict requirements of the Zoning Ordinance prohibited construction on this property and that the applicant had usurped the only buildable site with the cul-de-sac. She said construction of any type on this land would be detrimental to the other abutting properties. Ms. Harrison stated that the outcome would be a ruling that the applicant had forfeited their right to further construction on the lot by covering a considerable portion of it with a large cul-de-sac, leaving only an unbuildable grade adjacent to environmentally protected land and homes of substantial value.

Bob Klaiss, 1570 Dranesville Road, said he was the owner of Lot 6, adjacent to the applicant's lot. He said he was concerned with the cul-de-sac because it had taken out a buildable site of this particular lot, which falls steeply down into a stream that falls into another property. Mr. Klaiss stated that there were 4 acres of trees behind the property that he believed belong to Toll Brothers and Toll Brothers were required to maintain them. He suggested that the variance be granted on the rear site where the house would be centrally located.

There was no one else to speak in opposition and Chairman DiGiulian called the applicant to the podium for rebuttal.

Mr. Pittman stated that there was 2.4 acres of trees behind the property going down to the stream and that this grade created a perfect area for a walkout basement. He said he would have doors going out to the back of the house that would walkout onto ground, gently sloping down toward the stream. Mr. Pittman stated that if the Board granted him a greater variance, where he could level the house so it would not be 75 feet on one side and 20 feet on the other side, he would be happy to do so. He said he wanted to build something that would be compatible with his neighbors and that he hoped to mend the difficulties with his opposing neighbors.

Mr. McPherson wanted to know if there were any current rezoning or variance applications that were pending for lots 1 through 7. Staff responded by saying there were no current applications pending for future development, but that there had been a subdivision variance granted for the creation of these lots.

Mr. Pittman asked that the eight-day waiting period be waived, if the application was approved.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 97-D-118 for the reasons stated in the Resolution.

Mr. Pammel noted that when there was a situation like this where the adjoining neighbors were in opposition for these reasons, where there was a buildable lot, if the Board did not grant the variance and the criteria was there to justify the granting of a variance, the County was left with the only other alternative of acquiring the property. He said if the variance was not granted, confiscation occurred, and the Board had to be very careful and not put the County in the position of having to put taxpayers money up to acquire property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

the Zoning Ordinance to permit construction of dwelling 11.6 ft. from edge of existing easement line. Located at terminus of Judd Ct. on approx. 38,328 sq. ft. of land zoned R-1. Dranesville District. Tax Map 10-2 ((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 February 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony before the Board of Zoning Appeals on this date.
3. The applicant does comply with the nine prescribed criteria for the granting of a variance.
4. In particular, the configuration of the easement and the cul-de-sac do create major problems with respect to location of the dwelling.
5. The applicant has indicated that this is a buildable lot.
6. The applicant has certification to that effect.
7. What the applicant desires to put on the building will be in harmony with the neighborhood and will respect the environmental features of the area.

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

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

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

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

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

limitations:

1. This variance is approved for the location of a single family dwelling shown on the plat prepared by

Kenneth W. White, dated November 12, 1997, 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 5-2 with Mr. Dively and Mr. Hammack abstaining. Mr. Pammel moved to waive the 8-day requirement and Mr. McPherson seconded. The motion carried by a vote of 5-2.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 28, February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. BRYAN P. COLLINS & THERESA OVIEDO, SP 97-D-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.9 ft. from street line of a corner lot. Located at 7930 Old Falls Rd. on approx. 1.95 ac. of land zoned R-1. Dranesville District. Tax Map 20-4 ((11)) 46. (Concurrent with VC 97-D-110).

9:00 A.M. BRYAN P. COLLINS & THERESA OVIEDO, VC 97-D-110 Appl. under Sect(s). 18-401 and 10-104 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yard. Located at 7930 Old Falls Rd. on approx. 1.95 ac. of land zoned R-1. Dranesville District. Tax Map 20-4 ((11)) 46. (Concurrent with SP 97-D-055).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. Jonathan Rak, the applicant's agent, 11320 Random Hills Road, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permits and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for error in building location to permit the dwelling to remain 30.9 feet from the front lot line adjacent to a 15-foot wide outlet road and a variance to permit construction of a 6-foot high solid wood fence in a front yard also adjacent to the 15-foot wide outlet road. The minimum required front yard was 40 feet; therefore, the amount of error for the building was 9.1 feet or 23 percent. The Zoning Ordinance required that fences be no higher than 4 feet in any front yard.

Mr. Rak said the special permit request was for maintaining the house in its present location. He said the building location was approved in error by the Department of Environment (DEM) staff who thought this was a side yard and measured the setback using the side yard requirements. Mr. Rak stated that the house was constructed in accordance with the approved plan and did not adversely impact adjacent properties and that strict conformance with the setback would require removal of the front portion of the house. He said this would be unreasonable.

Mr. Rak stated that with respect to the variance for the 6-foot fence along the pipestem driveway, the applicant proposed to install the fence on the west side of the property. He said a letter in the applicant's

file expressed concerns about the fence being installed on the opposite side toward Fox Hound Road, but he clarified that the fence would be on the pipestem. Mr. Rak stated that since this was a pipestem driveway that served two houses on the side of the applicant's yard, there was a requirement that it be treated as a front yard and limit the height of the fence to 4 feet.

Mr. Rak stated that the proposed fence had three purposes: 1) to prevent trespassing between Fox Hound Road and the McLean Hunt Estates Park; 2) to provide security for their children, and, 3) to provide privacy in their back yard and an outdoor pool they hope to build. He said a 4-foot fence would not stop the trespassing because it could be hopped over, but the 6-foot fence would be a much greater deterrent. Mr. Rak further stated that the 4-foot fence would not accomplish the purpose of privacy and security they desired. He said taller fences were customary in back yards throughout Fairfax County, but in the case of the pipestem situation, it would be permitted here and the Ordinance recognizes a distinction between the rules for fences on larger lot such as this.

Mr. Rak stated that the variance met the legal criteria set forth in the code. He said the property was acquired in good faith. Mr. Rak stated that the lot was exceptionally narrow and bracketed by the dead end of Fox Hound Road on the east and the pipestem driveway on the west. He said this created a hardship and it prevented the applicant from enjoying the privacy and security of a back yard. Mr. Rak stated that the erection of the fence would not adversely effect the adjacent properties because of the its location and the 5-foot setback. He said the property owners for Parcel 57B and 60 had no objections to the variance request.

Chairman DiGiulian called for speakers in support of the application.

John Bowen, 7910 Fox Hound Road, McLean, Virginia, stated that his property was on the east side of the applicant's property and that there was an existing fence 6 feet high, which ran 35 feet from Fox Hound Road where it drops down to 4 feet. He said he did not oppose the variance, but he was concerned that it would lead to a variance request to raise the existing 4-foot fence up to 6 feet. Mr. Bowen said if the property was larger and a 7-foot fence was permitted, it would be unsightly. He would not agree to a variance on the east side of the property.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 97-D-055 and VC 97-D-110 for the reasons stated in the Resolutions.

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

BRYAN P. COLLINS & THERESA OVIEDO, VC 97-D-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in a front yard. Located at 7930 Old Falls Rd. on approx. 1.95 ac. of land zoned R-1. Dranesville District. Tax Map 20-4 ((11)) 46. (Concurrent with SP 97-D-055). 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 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for the granting of a variance application.
3. In particular, this lot has exceptional shape and other unusual conditions.
4. The property has two front yards.
5. The applicant has satisfied the requirements for the 6-foot fence in the location applied for.

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

Zoning Ordinance:

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

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

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

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

1. This variance is approved for the location of a 6.0 foot high fence shown on the plat prepared by R.C. Fields Jr. and Associates, dated August 19, 1997, as revised through January 14, 1998, submitted with this application and is not transferable to other land.

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

Mr. 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 18, 1998. This date shall be deemed to be the final approval date of this variance.

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

BYRAN P. COLLINS & THERESA OVIEDO, SP 97-D-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.9 ft. from street line of a corner lot. Located at 7930 Old Falls Rd. on approx. 1.95 ac. of land zoned R-1. Dranesville District. Tax Map 20-4 ((11)) 46. (Concurrent with VC 97-D-110). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 1998; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by R.C. Fields Jr. and Associates, dated August 19, 1997, as revised through January 14, 1998, submitted with this application and is not transferable to other land.

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

Mr. 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 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 281, February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. CHARLES F. & CYNTHIA STEELE VANCE, VC 97-D-101 Appl. under Sect(s). 18-401 of the

Zoning Ordinance to permit construction of accessory structure 1.0 ft. and eave 0.0 ft. from side lot line. Located at 1009 Crest Ln. on approx. 40,493 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-4((5))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 agent, Brian McCarthy, 7003 Carroll Avenue, Takoma Park, Maryland, replied that it was.

Heidi Powell, Staff Coordinator, Special Permits and Variance Branch, made staff presentation as outlined in the staff report. She stated that at the January 6, 1998, meeting, the BZA voted to defer the hearing to February 10, 1998, in order to allow the applicant time to submit a revised plat. She said the original variance request was to permit construction of a garage 1.0 foot and an eave 0.0 feet from the west side lot line. The Board voted unanimously for the one month deferral, explaining that the BZA preferred not to approve a structure with a setback less than 4.0 feet from a lot line, due to concerns about an owner's ability to conduct maintenance on site. The revised plat showed the proposed garage addition 4.0 feet from a side lot line with a 1-foot eave.

Mr. McCarthy stated that a month ago when the case was deferred, they took to heart the issue of maintenance on the side of the building that would have been 0.0 feet from the property line, and have revised the plat to show the building 4.0 feet from the property line.

Mr. McCarthy referred to letters of support that were submitted by neighbors. He said he had obtained written support from all of the adjacent neighbors, with the exception of the Park Authority. Mr. McCarthy submitted copies of the letters of support for the record. He said the neighbors all felt that the garage would not be a detriment, but that it would be a welcome asset, and it would conceal the parked cars that the applicant currently had parked on their pad.

Mr. Hammack wanted to know if the applicant reduced the depth of the garage. Mr. McCarthy replied that it was narrowed by 4.0 feet.

Mr. McPherson asked Mr. McCarthy what the dotted lines around the garage represented. Mr. McCarthy responded by saying the dotted lines represented the eave.

Mr. McPherson wanted to know what was the distance from the eave to the property line. Mr. McCarthy replied that it was 3.0 feet.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 97-D-101 for the reasons stated in the Resolution.

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

CHARLES F. & CYNTHIA STEELE VANCE, VC 97-D-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.0 ft. and eave 0.0 ft. from side lot line (The Board approved the addition 4.0 ft. and eave 3.0 ft. from side lot line). Located at 1009 Crest Ln. on approx. 40,493 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-4((5))5. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 1998; and

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

1. The applicant is the owner of the land.
2. The application being filed under Section 18-401 and 3-107 of the Zoning Ordinance specifically to permit construction of an addition, a garage, 4.0 feet and eave being 3.0 feet from the side lot line.
3. The applicant does comply with the nine prescribed criteria for the granting of a variance.
4. Specifically, the topographical condition of the property is very steep and the lot has an unusual configuration with the residence located at the narrowest portion of the lot.

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

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

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

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

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

1. This variance is approved for the location of an addition (garage) shown on the plat prepared by R.C. Fields, Jr., Land Surveyor, dated August 8, 1997, date stamp received January 14, 1998, 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. 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 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 281, February 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. LINCOLN P. BLOOMFIELD, JR. & REBECCA A. MEDEN, VC 97-V-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from street line of a corner lot. Located at 6108 Vernon Terrace on approx. 7,583 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(6) 9.

Chairman DiGiulian stated that the Board would hear the case that was passed over earlier this morning and he called VC 97-V-119, Lincoln P. Bloomfield, Jr., and Rebecca A. Meden. He asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lincoln P. Bloomfield, Jr., 6108 Vernon Terrace, Alexandria, Virginia, replied that it was. He apologized for the inconvenience of missing his scheduled time.

Susan Langdon, Chief, Special Permits and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval to allow construction of an addition, the enclosure of an existing porch, 9.9 feet from a front lot line of a corner lot. A minimum front yard of 30 feet was required; therefore, a variance of 20.1 feet was being requested.

Mr. Bloomfield commended the staff for their professionalism and courtesy in the way they did their work. He said that the house he purchased last July was constructed about 1926 or 1927 and it had two front yards. Mr. Bloomfield stated that the front of the house met current zoning requirements for a front yard, but the side along Wood Mount Road was also treated as a front yard. He said the part of the structure that abuts Wood Mount Road was 9.9 feet from County Property and the survey did not accurately reflect the footprint. Mr. Bloomfield stated that if the open porch was included, it would show an underground garage which gained access from Vernon Terrace. There was a thick slab of concrete which served as the floor of the open porch and also the foundation for the first story.

Mr. Bloomfield said there was a first-story structure which continued from the front to the back of the house. He stated there was a balcony which came out to Wood Mount Road that was not usable. Mr. Bloomfield said this structure was that of a house with a pillar on the open porch corner and fully was floored. He stated that the variance was not to change the definition or the footprint of the house, but to change the quality of the 8 by 9 foot space from outdoors to indoors by putting walls on each of the open surfaces. Mr. Bloomfield stated that it was his understanding from the zoning law that construction was not permitted too close to the road, but the reason he was asking for the variance was because of the close proximity to the road. He said if he was permitted to enclose the area, it would become part of the first floor interior and would be used as part of the intended use of the house.

Mr. Bloomfield stated that the property was acquired in good faith and that this was an extraordinary situation in that, of the eight original homes of Belle Haven in Alexandria, this was the only one zoned with the equivalent of two front yards. He said the strict application of this ordinance would produce hardship because it would restrict all reasonable use of the property. Mr. Bloomfield stated that this would not be a detriment to adjacent properties and the character of the dwelling would be maintained and be in harmony with other homes in the neighborhood.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. McPherson moved to approve VC 97-V-119 for the reasons stated in the Resolution.

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LINCOLN P. BLOOMFIELD, JR. & REBECCA A. MEDEN, VC 97-V-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from street line of a corner lot. Located at 6108 Vernon Terrace on approx. 7,583 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(6) 9. 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 10, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the necessary standard for the granting of a variance.
- 3. This is a double front lot.
- 4. The footprint has not changed from the original building that is on the property right now.
- 5. It is consistent with the terms and conditions required for the granting of a variance.

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

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

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

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

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

- 1. This variance is approved for the location of an addition (enclosed porch) shown on the plat prepared by Kenneth W. White, dated May 30, 1997, submitted with this application and is not

transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The addition shall be architecturally compatible with the existing structure.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 289 February 10, 1998 (Tape 1), After Agenda Items:

Request for Additional Time to Commence Construction Approved by
VC 92-B-100, J. Douglas and Carol Hertel, 7401 and 7403 Long Pine Drive,
80-1((2))(72) A1 and A2, Braddock District.

Mr. Hammack wanted to know why it took a period of five years for site plans to be revised in order to get the application through.

Staff responded by saying that the subdivision was recorded and that 2 lots were created. However, there was a stream that ran through the property and the applicant obtained a waiver letter for storm water management requirements. Staff said the provision of the waiver letter was for the applicant to provide stream improvements. Staff also said it was staff's understanding that the applicant had obtained engineering calculations for stream improvements but the calculations were rejected by the County, so the applicant was forming new calculations and it had taken a little longer than normal.

Mr. McPherson said there had to be a reasonable time on these things.

Mr. Hammack said it still took a long time for the County to approve the application since it was only 1 lot.

Staff clarified their earlier statement by saying the subdivision had already been approved, but resolution of storm water management was required prior to pulling any building permits.

Mr. Hammack said he realized the applicant did not make their application until 1995, but that it still took five years to get it through.

Mr. Dively said it was not clear whether it was the applicant or the County who caused the delay and that it may have been a mixed bag, but the applicant was not present to complain.

Mr. Pammel said the request was for 36 months but that he felt comfortable with 24 months. He moved to approve the additional time request. The new expiration date is December 16, 1999. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 289 February 10, 1998 (Tape 1), After Agenda Item:

Request for Additional Time to Commence Construction Approved by Variance, VS 95-H-040, Pedro and
Carmen Toscano, 9954 Vale Road, 37-4((1))55, Hunter Mill District.

Page 290 February 10, 1998, (Tape 1), After Agenda Item, continued from Page 289

Mr. Pammel moved to approve 18 months of additional time for VC 95-H-040. The new expiration date is June 19, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 290 February 10, 1998 (Tape 1), After Agenda Item:

Request for Additional Time to Commence Construction Approved by VC 95-M-066, Seven Corners Animal Hospital, 6300 Arlington Boulevard, 51-3((1))37, Mason District.

Mr. Pammel moved to approve 12 months of additional time for VC 95-M-066. The new expiration date is February 1, 1999. Mr. McPherson seconded the motion which carried by a vote of 7-0.

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Page 290 February 10, 1998 (Tape 1), After Agenda Item:

Approval of February 3, 1998, Resolutions.

Mr. Kelley moved to approve the February 3, 1998, Resolutions. Mr. Dively and Mr. Hammack seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:42 a.m.

Minutes by: Ann-Marie Wellington

Approved on: October 13, 1998

Susan C. Langdon

Susan C. Langdon, Chief
Special Permit and Variance Branch

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 February 17, 1998. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; and, James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:05 p.m. and asked if there were any Board Matters to bring before the Board.

Mr. Kelley noted with regret that this was Timothy McPherson's last meeting as his term on the Board of Zoning Appeals was due to expire. Mr. Kelley thanked Mr. McPherson for his contributions to the Board and for his humor. He added that the common sense Mr. McPherson demonstrated when making decisions was an asset to the Board and wished him well in his future endeavors.

Vice Chairman Ribble echoed the comments made by Mr. Kelley and added that ³²¹Mr. McPherson had benefitted both Fairfax County and the community by serving on the Board of Zoning Appeals and that he would certainly be missed.

Mr. McPherson thanked them for their comments and said he had enjoyed serving on the Board.

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Page 291 February 17, 1998, (Tape 1), Schedule Case:

8:00 P.M. ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and child care center. Located on Sugarland Rd. at the Fairfax/Loudoun County Line on approx. 2.27 ac. Of land zoned R-1. Dranesville District. Tax Map 5-4 ((1)) 3, 4 pt. (Moved from 12/10/97, 2/25/97, 3/18/97, 6/17/97, 7/15/97, 9/23/97, 11/18/97). (Def. from 1/20/98).

Vice Chairman Ribble asked the applicant to reaffirm the affidavit. Randy Minchew, with the law firm of Hazel & Thomas, replied that the applicant was prepared to go forward.

Mr. McPherson disclosed that one of the attorney's involved either directly or indirectly in this case, Norman Hammer, had been his law partner approximately ten years ago. Mr. McPherson added that Mr. Hammer's representation of the applicants before the Board of Zoning Appeals (BZA) occurred after their partnership; therefore, there was no conflict and he would participate in the case.

Mr. Kelley said that over the weekend the BZA received revised development conditions and added that the pivotal issue appeared to be the applicant's statement that they would be willing to purchase the Starkey property located adjacent to the subject property. Mr. Kelley said since this property was mentioned in the staff report and the development conditions, he questioned if this presented a problem with respect to how the application was advertised.

Barbara Byron, Director of the Zoning Evaluation Division, explained that the way the application was structured, the Starkey property was not, at this point in time, a portion of the application property. She added that the development conditions discuss the future incorporation of the Starkey property into the site through future zoning changes. Ms. Byron added that during conversations with the County Attorney's office, they indicated that it would be an appropriate method to use if the applicant agreed to the proposed development conditions. The applicant's attorney had led staff to believe that the applicant concurred with the revised conditions. She explained that there was no advertising problem since the Starkey property was not a part of the application before the BZA.

Mr. Kelley asked Ms. Byron if staff's position would remain the same if he were to state that he would not support the application unless the Starkey property was included as part of the application. Ms. Byron said her response would be the same. She suggested that the BZA ask the applicant if they would be willing to defer the application for a short period of time to allow the incorporation of the Starkey property into the application. Mr. Kelley did so.

Mr. Minchew explained that the reason the applicant began discussions with the owners of the Starkey property was twofold: 1) the applicant wanted to have a good line of communication with their neighbor,

and, 2) they wanted to keep the parking as high as possible and still provide a 50 foot buffer. The applicant wanted to purchase the property and reach an agreement whereby the Starkey property would retain 25 feet of very thick existing and deciduous trees in the form of an easement with the applicant using the other 25 feet. Mr. Minchew said this opened the doorway for negotiations and that perhaps it would be wise for the applicant to seek an option to have potential control of the property in the event it was needed. He said he believed the application stood on its own and is in full conformance with all the Zoning Ordinance requirements. Mr. Minchew said those discussions were what led to the revised wording in the Development Conditions dated February 17, 1998. He added that the applicant agreed to purchase the five acres prior to site plan approval and were aware that it could not become a part of the application unless the applicant came back to the BZA for a special permit amendment.

Mr. Kelley said he personally believed that the Starkey property should be included in the special permit application and made a motion to defer the application to give the applicant an opportunity to purchase the Starkey property and come back to the BZA. He added at that time the BZA could render a decision regarding whether or not the property should be incorporated into the special permit application.

Mr. McPherson seconded the motion. He believed that it was clear from the work that the Planning Commission had done and the input that staff had received from a wide variety of people that this one element was very important in deciding whether or not it was in the best interest of the community for this applicant to be granted this request, as well as whether it met the necessary standards for the granting of a special permit. Mr. McPherson added that while the applicant may have the best intentions to follow through with these items, the hard reality was something that would be a lot easier for people to rely upon in making the final decision.

Mr. Minchew asked if it would be more prudent to hold the public hearing and defer decision until such time that he could appear before the BZA with a recorded deed proving ownership. He said that it was the applicant's desire not to bring the Starkey property into the application and added that if the property was brought into the application, the applicant must go back to Loudoun County to amend the special exception that was approved by that County.

Mr. Hammack said he basically agreed with the comments by Mr. Kelley, but, it appeared that the Starkey property was important because the applicant was dedicating 35 feet from the centerline and possibly constructing that portion of the road. He added this would be considered offsite improvements and he questioned if the BZA could require an applicant to do this when it was not part of the plat that was before the Board for approval. Mr. Hammack pointed out that under the proposed development conditions, these improvements would be done at some time in the future and there were certain delegations of authority and trip generation reports that would have to be reviewed. He believed the BZA should have the benefit of knowing exactly what was going to be on the property during their analysis and how it met the requirements of Fairfax County as presented. Mr. Hammack believed an application should be approved as presented and added that he was not comfortable with approving a project where Phase 2 and Phase 3 were open to question and that he did not believe it was fair to the applicant to have to worry about that possibility as well.

Mr. Minchew said the application as filed on the subject property fully complied with the standards of Fairfax County. The Starkey property was above and beyond those standards and was a true reserve ground if there was a problem in the future, but the property would be added no later than in Phase 3. He respectfully disagreed that the application did not conform with the Ordinance.

Mr. Kelley said this was the first time in his memory that development conditions included the wording "revocation hearing", and that he did not want to see that in any development condition as he did not want to go through any such hearing. He noted that the BZA had one application that was close to such action and he did not like the atmosphere that surrounded that action. Mr. Kelley urged the BZA to adopt his motion.

Mr. Hammack sympathized with Mr. Kelley's motion, but pointed out that there were people present who wished to speak to the application. He suggested that perhaps the public hearing should be held.

Mr. Kelley said the public hearing was going to be focused on and around the Starkey property. He

sympathized that the applicant would have to go back to the Loudoun County Board of Supervisors, but he did not believe the BZA could hear the application as presented and make a fair decision.

Vice Chairman Ribble called for a vote on the motion as made by Mr. Kelley. The motion was seconded by Mr. McPherson and carried by a vote of 5-0-1 with Mr. Pammel abstaining. Chairman John DiGiulian was absent from the meeting.

Mr. Minchew asked for a clarification of the motion. He asked if it required that the applicant purchase the Starkey property and come back to the BZA with proof of such purchase, or if it required that the applicant purchase the Starkey property and bring it into the subject application.

Mr. Kelley said based on the information before the Board today, it was his position that the Starkey property should be included in the special permit application. Vice Chairman Ribble said he would feel more comfortable if the applicant had the deed in hand and could stipulate what the future plans were for the property.

Mr. Kelley pointed out that Development Condition Number 29 dated February 13, 1998, stated that Phase 3 required that the Starkey property come into the special permit application. Mr. Kelley questioned the delay. Mr. Minchew said the applicant was looking into the future and would bring the property into the application if and when a parking problem arose, but no later than Phase 3. Mr. Hammack questioned how the applicant would construct the road if the Starkey property was not brought in at the onset of construction. Mr. Minchew explained that the owner of the Starkey property had agreed to dedicate the right-of-way.

Mr. Kelley asked staff to respond to the speaker's concerns regarding a lengthy delay if the applicant was required to bring the Starkey property into the application. Ms. Byron said since the Starkey property was subject to a Proffer Development Plan and to proffer the amendment to delete these five acres, it would have to go through the staffing process, the Board of Supervisors, and the Planning Commission. If the applicant was prepared to file the request tomorrow, the application would probably not be heard before July, 1998. Ms. Byron said Mr. Minchew had indicated to staff if the applicant was required to incorporate the property into the special permit, it would require that they go back to Loudoun County to amend the special exception since it required that all parking be on site.

Mr. Dively asked if the property would have to come within the special permit if the applicant purchased the property and held the deed to the land. Ms. Byron said staff was comfortable with Development Condition Number 29 as written since it appeared that the subject property was already entwined with the Starkey property.

Mr. Kelley said following those discussions, it appeared that it would not be necessary to require that the Starkey property be brought into the special permit application at this time, but that he would insist on the applicant purchasing and holding deed to the property.

Mr. Minchew asked if the BZA was asking that he appear to show proof of purchase and at that time a public hearing date would be set. Vice Chairman Ribble said that was the intent of the motion.

A discussion took place between the BZA and the speaker regarding an appropriate time frame for him to appear before the BZA. Mr. Minchew briefly described the process that would be required to subdivide the property and suggested approximately three weeks.

Ms. Byron asked if the BZA would consider placing this action on a day meeting since it appeared that the BZA's agendas for its night meetings already had controversial cases scheduled for several months. Mr. Kelley suggested scheduling a special night meeting for this case. Mr. Hammack agreed.

Mr. Dively asked how the process involved the Department of Environmental Management. Mr. Minchew introduced the applicant's engineer who came forward to explain the process to the Board.

In response to the BZA's concern regarding placing a controversial case on a day meeting, Mr. Minchew

Page 294, February 17, 1998 (Tape 1), ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038, continued from Page 293

said the issues had been resolved with the citizens and he was not anticipating any objection. Vice Chairman Ribble polled the audience to determine if there was anyone present who wished to speak to the application. There were three people present who wished to speak to the application and they voiced no objections to a day meeting and the BZA determined it would be appropriate to hold the public hearing on a day meeting.

Following this discussion, Ms. Byron suggested March 10, 1998, at 9:00 a.m. Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

Mr. Hammack asked staff to provide information regarding trip generation prior to the public hearing and expressed concern with Development Condition Number 10. He said it appeared that staff was still concerned with the traffic and parking impact.

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Page 294, February 17, 1998, (Tape 1), Action Item:

Intent to Defer Request Regarding
Max and Macie Rubin, VC 97-D-107

Mr. McPherson said this was a request for a short deferral and made a motion to approve the request based on staff's recommendation. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 294, February 17, 1998, (Tape 1), Action Item:

Intent to Defer Request Regarding
Your Child's Place, SPA 95-H-007 and VC 97-H-009

Mr. McPherson said this was a request for a short deferral and made a motion that the Board of Zoning Appeals issue an intent to defer the application to April 7, 1998. Mr. Pammel and Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 294, February 17, 1998, (Tape 1), Action Item:

Out-of-Turn Hearing Request for
Beverly J. Cayford, VC 98-D-013

Mr. Hammack asked staff for a suggested hearing date. Susan Langdon, Chief, Special Permit and Variance Branch, suggested April 7, 1998, at 9:00 a.m. Mr. Hammack so moved. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 294, February 17, 1998, (Tape 1), Action Item:

Approval of February 10, 1998 Resolutions


Mr. Pammel made a motion to approve the Resolutions as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 8:45 p.m.

Minutes by: Betsy Hurtt

Approved on: June 22, 1999



Regina Thorn, 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 February 24, 1998. The following Board Members were present: Chairman John DiGiulian; 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 217 February 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE P. & JANE S. CURZIO, VC 97-M-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from side lot line and 19.9 ft. from rear lot line. Located at 6546 Gretna Green Way on approx. 4,663 sq. ft. of land zoned PDH-8. Mason District. Tax Map 72-1 ((26))(2) 23.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Michael E. Neber, 2960 Gallows Road, Falls Church, replied that it was.

Heidi Powell, Staff Coordinator, presented staff's position as contained in the Staff Report dated February 17, 1998.

Mr. Michael Neber indicated that the applicants' "Statement of Justification", contained in the staff report, warranted the variance request.

Chairman DiGiulian called for speakers either in support or in opposition to the application and receiving no response, closed the public hearing.

Mr. Hammack moved to approve VC 97-M-124 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 17, 1998.

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

EUGENE P. & JANE S. CURZIO, VC 97-M-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from side lot line and 19.9 ft. from rear lot line. Located at 6546 Gretna Green Way on approx. 4,663 sq. ft. of land zoned PDH-8. Mason District. Tax Map 72-1 ((26))(2) 23. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 1998; and

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

1. The applicants are the owners of the land.
2. The reasons set forth in the applicants' Statement of Justification are warranted.
3. The addition is in line with the existing dwelling.
4. A bay window is a minimal variance towards the side lot line.
5. The addition will not change or impact the zoning district.

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

1. That the subject property was acquired in good faith.

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

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of an addition (kitchen expansion with bay window) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated September 30, 1997, 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.

Messieurs Pammel and Ribble seconded the motion which carried unanimously by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MAX & MACIE RUBIN, VC 97-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.6 ft. and stairs 21.0 ft. from front lot line. Located at 1124 Marion Ave. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32.

Chairman DiGiulian announced that the previous week, the Board had issued an Intent to Defer for Variance application, VC 97-D-107, MAX & MACIE RUBIN, and that staff had recommended April 2, 1998. There being no objections, Mr. Pammel moved to defer VC 97-D-107 to April 2, 1998. The motion was seconded by Mr. Hammack and carried by a unanimous vote of 6-0.

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As the applicant, GABRIEL NASSAR AND ANN GAMBER, VCA 96-M-023, was not present when called, the Board unanimously concurred to pass on to the next scheduled case and recall VCA 96-M-023 later in the meeting.

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9:00 A.M. MARK WUCKOVICH, VC 97-S-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 4.7 ft. from side lot line. Located at 6706 Huntsman Blvd. on approx. 10,890 sq. ft. of land zoned R-2. Springfield District. Tax Map 88-2 ((4)) 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. Mr. Mark Wuckovich, 6706 Huntsman Boulevard, Springfield, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, made staff's presentation, as contained in the Staff Report dated February 17, 1998.

Mr. Mark Wuckovich explained that there was only one feasible place, along the side of his house, to construct a deck because of his lot's topography; there is a severe slope and the lot is narrow. In response to Mr. Hammack, the applicant stated he had no intention of enclosing the deck.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Kelley moved to approve VC 97-S-123, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated February 17, 1998.

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

MARK WUCKOVICH, VC 97-S-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 4.7 ft. from side lot line such that side yards total 18.4 feet. Located at 6706 Huntsman Blvd. on approx. 10,890 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 181. 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 24, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has complied with all necessary standards required for the approval of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a roofed deck shown on the plat prepared by Larry N. Scartz, dated November 16, 1995, revised November 5, 1997, 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 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

Page 301 February 24, 1998, (Tape 1), MARK WUCKOVICH, VC 97-S-123, continued from page (300)

time requested and an explanation of why additional time is required.

~~Mr.~~ Ribble seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 301, February 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BETHANN HOREY, VC 97-V-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 1921 Belfield Rd. on approx. 11,857 sq. ft. of land zoned R-4, HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 2 and 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. Mrs. Bethann B. Horey, 1921 Belfield Road, Alexandria, Virginia, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, made staff's presentation, as contained in the Staff Report dated February 17, 1998.

Mrs. Bethann Horey informed the Board that her home was built in the late 1920's or early 1930's, was built on the zero lot line, and that she wanted to build an addition which would not adversely affect anyone.

Mr. Pammel commented that because there was no Zoning Ordinance at the time when Mrs. Horey's home was constructed, there were no requirements and restrictions which is the reason the unit was placed where it was.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Ribble moved to approve VC 97-V-126 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated February 17, 1998.

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

BETHANN HOREY, VC 97-V-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 1921 Belfield Rd. on approx. 11,857 sq. ft. of land zoned R-4, HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 2 and 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 February 24, 1998; and

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

1. The applicant is the owner of the land.
2. There exists an extraordinary situation on the property with the house, constructed over sixty (60) years ago, having been placed over the set-back line.

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Kenneth W. White, dated November 18, 1997, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 303, February 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JUAN A. TORRES, VC 97-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.63 ft. from side lot line. Located at 12441 Colewood St. on approx. 22,000 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 57. (Concurrent with SP 97-Y-062).

9:00 A.M. JUAN A. TORRES, SP 97-Y-062 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 5.0 ft. from side lot line. Located at 12441 Colewood St. on approx. 22,000 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 57. (Concurrent with VC 97-Y-133).

Chairman DiGiulian called the applicant to the podium and asked if the affidavits before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Juan A. Torres, 12441 Colewood Street, Herndon, Virginia, replied that they were.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, made staff's presentation, as contained in the Staff Report dated February 17, 1998.

Mr. Juan Torres asked that he be permitted to keep the shed that was on his property when purchased. He pointed out that the area was rural and that the shed would have no impact on anyone. In response to Mr. Pammel's query to justify his variance request, Mr. Torres explained that his lot was narrow and there was no other place to build the garage without it encroaching into the lot line. In response to Mr. Hammack's question, he stated that his neighbors had no objection; they supported his proposal and even had a similar unit of their own.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Dively moved to approve SP 97-Y-062 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated February 17, 1998.

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

JUAN A. TORRES, SP 97-Y-062 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 5.0 ft. from side lot line. Located at 12441 Colewood St. on approx. 22,000 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 57. (Concurrent with VC 97-Y-133). 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 24, 1998; and

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

1. The shed was already on the property when the property was purchased and was never a problem.
2. The shed is five (5) feet off the property lot line so its maintenance will not be difficult.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard

Requirements Based on Error in Building Location, the Board has determined:

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

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

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

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

- 1. This Special Permit is approved for the location of an accessory storage structure shown on the plat prepared by Thomas F. Conlon, Jr., dated August 29, 1997, revised November 14, 1997 submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this special permit.

Mr. Dively then moved to approve VC 97-Y-133 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated February 17, 1998.

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

JUAN A. TORRES, VC 97-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.63 ft. from side lot line. Located at 12441 Colewood St. on approx. 22,000 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 57. (Concurrent with SP 97-Y-062). 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 24, 1998; and

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

1. The applicant is the owner of the land.
2. Although the property is very narrow, there remains a significant distance between the new addition and the lot line.

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

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

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

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

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

1. This Variance is approved for the location of a detached garage shown on the plat prepared by Thomas F. Conlon, Jr., dated August 29, 1997, revised November 14, 1997, 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. Ribble seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 300, February 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK T. BOWIE, VC 97-M-081 Appl. under Sect(s). 18-401 and 10-104 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 7019 Kenfig Pl. on approx. 14,300 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((22))(E) 2. (DEF. FROM 10/28/97 FOR NOTICES).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Patrick T. Bowie, 7019 Kenfig Place, Falls Church, Virginia replied that it was.

Julie Schilling, Staff Coordinator, presented staff's position, as contained in the Staff Report dated October 21, 1997. She noted that the Zoning Ordinance prohibited such an accessory structure, in this case a detached garage, in a front yard of a lot containing less than 36,000 square feet.

Mr. Patrick Bowie stated that, when applying for a permit to construct a shed, the County staff informed him that one was not required and sometime during the construction of the shed/structure it evolved into a garage. He professed that he was ignorant of the rules and regulations and submitted that he had spent considerable time, effort and money cleaning up this property, inherited from his father, and respectfully requested that he be allowed to keep the garage. In response to Chairman DiGiulian's question, he acknowledged several opposition letters pointing out that they were from neighbors who supported Mr. O'Malley, who vehemently opposed the variance. He informed Mr. Hammack that he was in the process of filing for a building permit.

Chairman DiGiulian called for speakers in support and received no response.

Julie Schilling, Staff Coordinator, responded to Mr. Hammack's questions regarding the shed setback violation. She informed Mr. Dively that the structure was identified as a garage on the variance plat.

Chairman DiGiulian called for speakers in opposition.

Mr. James Proctor, 3213 Gary Court, Falls Church, as a contiguous neighbor with full view of the structure, pointed out that the structure was not harmonious with the neighborhood, was odd looking, obtrusive, cluttered and unattractive, and he asked the Board to deny the application.

Mr. Wellman Hill, 7213 Marc Drive, Falls Church, speaking on behalf of the Broyhill Park Civic Association, stated that approval of this variance would set a detrimental precedent that could provide an avenue for avoiding Zoning Ordinance restrictions. He pointed out that applications for building permits and a variance should be applied for before commencing construction to assure the project's compliance with County Code and Zoning Ordinance regulations.

Mr. Edward O'Malley, 7021 Kenfig Place, Falls Church, an adjoining neighbor, stated that the structure could not be classified as a garage, that it was a storage shed in an inappropriate location that violated setback and zoning requirements. He worried that property values would be adversely affected. Mr. O'Malley called the Board's attention to his position paper which is contained in the record and notes his issues and concerns.

Chairman DiGiulian called upon Mr. Bowie for rebuttal.

Mr. Bowie explained that a large tree precluded positioning the garage further to the lot's rear. He reiterated that he made a mistake and apologized to the neighbors. He clarified that the garage was not used for construction flotsam storage, but only some items previously kept in his basement. In response to Mr. Hammack's question, he concurred that the structure was about 300 square feet, that he had poured a concrete pad and run electricity, that construction had taken almost two years due to a career changing injury, and that he could not recall exactly what he was instructed by County staff when he initially applied for a building permit.

There being no further questions, Chairman DiGiulian closed the public hearing.

Mr. Pammel, voicing his support of the motion, commented that there appeared to be a miscommunication on the applicant's part, whether intentional or otherwise, in outlining what he had proposed to build and it was clear that the structure built was totally out of context with what is considered appropriate in the Zoning Ordinance and in meeting those standards.

Mr. Ribble moved to deny VC 97-M-081 because the application does not meet all the Required Standards for Variances.

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

PATRICK T. BOWIE, VC 97-M-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 7019 Kenfig Pl. on approx. 14,300 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((22))(E) 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 February 24, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has not met the required variance standards in this instance.
- 3. The accessory structure, although purported to be a garage, it is not.

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 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998.

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9:00 A.M. YOUR CHILD'S PLACE, INC., VC 97-H-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 6.0 ft. from front lot line. Located at 2580 Chain Bridge Rd. on approx. 10,983 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 50. Concurrent with SPA 95-H-007).

9:00 A.M. YOUR CHILD'S PLACE, INC., SPA 95-H-007 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-007 for child care center to permit change in development conditions, increase in enrollment, site modifications and increase in land area. Located at 2578 Chain Bridge Rd. on approx. 26,037 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 46A, 50. (Concurrent with VC 97-H-099).

Chairman DiGiulian announced that, at the request of the applicant to defer the public hearing, an Intent to Defer was issued by the Board of Zoning Appeals.

Mr. Pammel then moved to defer VC 97-H-099 and SPA 95-H-007, to staff's recommended date of April 7, 1998 at 9:00 a.m. The motion was seconded by Mr. Ribble and carried by a 6-0 vote.

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Page 308 February 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-08 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, sales and ancillary uses to permit building additions, site modifications and change in development conditions. Located at 15717 Lee Hwy. on approx. 212.26 ac. of land zoned R-C, NR, WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, 17 pt., 33A pt., 38 pt., 39 pt.; 64-1 ((4)) 7A. (DEFERRED FROM 12/23/97 FOR NOTICES)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Royce A. Spence, Esquire, 7297-A Lee Highway, Falls Church, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented staff's position, as contained in the Staff

Page 309, February 24, 1998, (Tape 1), LUCK STONE CORPORATION, SPA 81-S-064-08, continued from page 308

Report dated December 13, 1997, and the subsequent Addendum dated February 17, 1998. She noted that on Friday, February 20, 1998, the applicant had discussed two proposed changes with staff; the deletion of Development Condition #4 requiring submission of a Site Plan; and to change Development Condition #6 to allow modifications by Department of Environmental Management (DEM) to an existing on-site siltation pond. Ms. Langdon stated that staff had no objections to the proposed changes and the applicant's letter outlining the proposed changes was distributed that morning. Ms. Langdon stated that the subject application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and recommended approval.

Mr. Spence noted that the site existed since 1938; that he's represented the company since 1963; and that the two requested changes, an increase in the explosive use from 15,000 pounds to 20,000 pounds and the lowering of the amount of explosive material per delay to 850 pounds from 1,000 pounds, had caused such undeserved furor that numerous citizen meetings were conducted to address concerns and resolve the issues. The conclusion to these efforts, Mr. Spence pointed out, was that Luck Stone was withdrawing its request to increase the pound limit, as evidenced in his January 23, 1998, letter and that the West Fairfax Citizens Association had since reversed its position and now unanimously supported the application; their letter is contained in the file. In order to alleviate future misunderstandings or suspicions, Luck*Stone has organized a council of citizens and Luck*Stone representatives to periodically hold information/educational meetings, of which Luck*Stone has mutually beneficial expectations. The deletion of Condition #4 was requested, Mr. Spence explained, because the Ordinance does not require a site plan for such a use. Condition #6, he noted, was necessary due to the quarry's increased growth and production capacity which necessitated appropriate accommodation of the water runoff. Mr. Spence responded to Mr. Pammel's question regarding the limits, boundaries, and use of the EQC (environmental quality corridor) assuring that the portion of the site that was disturbed would be restored. He explained that there have been dramatic changes over the years and very real dangers with the requirement to stop traffic, and requested that Development Condition #32 be modified to afford some flexibility to permit Luck*Stone, under particular circumstances such as poor visibility due to blowing dust or a blasting distance within 600 feet of a public road, to make its own judgment regarding each situation. At Mr. Hammack's suggestion to quickly review it, Mr. Spence agreed to Development Condition #32, as written, as it allowed the necessary flexibility.

In response to Mr. Hammack question, Ms. Langdon stated that staff had no objection to the proposed changes.

Chairman DiGiulian called for speakers either in support or in opposition to the application and receiving no response, closed the public hearing.

Mr. Hammack moved to approve SPA 81-S-064-8 for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions, with modifications, contained in Appendix 1 of the Staff Addendum dated February 17, 1998 of the Staff Report dated December 13, 1997.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUCK STONE CORPORATION, SPA 81-S-064-08 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, sales and ancillary uses to permit building additions, site modifications and change in development conditions. Located at 15717 Lee Hwy. on approx. 212.26 ac. of land zoned R-C, NR, WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, 17 pt., 33A pt., 38 pt., 39 pt.; 64-1 ((4)) 7A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 1998; and

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

- 1. The applicant is the Title Owner/Lessee of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). R-C, NR, WS of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 15950 Lee Highway, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the property without a Special Permit amendment, if such uses do not affect this Special Permit Use.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Thomas E. Rust, dated August 28, 1997, revised October 28, 1997, 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. All landscaping and screening required in previous approvals of this use shall be maintained as follows:
 - a. Landscaping and screening shall be maintained in accordance with the landscape plan approved in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned and used properties and Lee Highway.
 - b. The vegetation between the access road to the asphalt plant and the proposed maintenance building shall be maintained at the level of Transitional Screening 3.
 - c. To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.
 - d. The shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance shall be maintained in a healthy condition and any dead or dying trees shall be replaced as needed as determined by the Urban Forestry Branch, DEM. The trees shall be a minimum of 6.0 feet in height and shall serve to soften the visual impact of the use. The number and type of any replacement trees shall be determined by the Urban Forestry Branch.
 - e. The following screening and landscaping shall be provided on the berm located along the periphery of the expansion area:
 - ▶ For the 400 foot long portion of the berm which directly abuts Bull Run Pose Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided.
 - ▶ The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Branch, DEM. To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.
 - f. In order to screen the quarry from Lee Highway, all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.

- g. Any dead, dying and/or hazardous vegetation shall be replaced. Number, size and species shall be as determined by the Urban Forestry Branch, DEM.
5. The existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway shall be designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management. The agreements reflected in the letter of September 25, 1992, and DEM approved modifications thereof, may be used to fulfill this requirement as may be acceptable to DEM.
6. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.
7. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.
8. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded by the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway or the design and/or implementation of public improvements on adjoining property to the west, the requirement right-of-way dedication may be increased as may be shown to be necessary by the Office of Transportation in an amount not to exceed 158 feet.
9. There shall be no access to the northern section of the quarry from Route 28. All access for excavation and/or parking of vehicles for on-site and/or off-site vehicles shall be by the tunnel under Route 29.
10. The applicant shall screen the recyclable concrete coming to the site from mud, dirt, trash and other construction debris. No leads shall be accepted if found to be contaminated with the aforementioned material.
11. Stockpiling and recycling of concrete on this site shall be approved for spent concrete obtained only from customers of the quarry and hauled by the same vehicles which deliver stone products to the customer.
12. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.
13. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC. If it is determined by DEM that the existing pavilion and/or clearing for the picnic area is located within the EQC, the applicant shall remove the pavilion and a restoration plan shall be submitted to the Urban Forestry Branch for review and approval. The restoration plan shall be developed with the intention of revegetating and restoring the disturbed portions of the EQC.
14. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains.
15. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.

16. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of \$2,000 per acre for the 134 unrestored acres shall be contained for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DEM.
17. Blasting vibrations shall be limited to a maximum resultant particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.
18. Blasting shall be regulated as follows:

Millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 15,000 pounds. No single millisecond delay charge shall be loaded in excess of 850 pounds. Blasting within 400 feet of any non-company owned residence shall conform to the standard blasting operation procedure as approved with this use permit.

In addition to the above referenced blasting procedures, blasts 200 feet or closer to the Trans Continental Pipeline shall be subject to the following additional provisions:

Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

Each such notice shall be given at least twenty-four hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

Any blast within 200 feet for the pipeline shall adhere to the following minimum delays.

- 17 milliseconds between decks in a hole.
- 25 milliseconds between holes.

The following information shall be forward to Trans Continental following each blast that occurs within 200 feet of the pipeline.

- A diagram or pattern of the shop
- Maximum pounds per delay of explosives in the shop
- Depth of the holes in the shop
- Type of explosives used
- Type of delays used
- Seismography reading and location
- Blasting records for the entire site shall be mad available to the County

19. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.
20. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.
21. The Zoning Enforcement Branch of the Zoning Administration Division, Office of Comprehensive Planning, shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.
22. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.
23. Roads or other areas subject to traffic within the confines of quarry shall be watered as often as necessary to control dust.
24. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.

25. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.
26. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.
27. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.
28. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m, except as qualified by Condition #7. There shall be no work on Sundays.
29. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.
30. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.
31. Traffic control practices shall be detailed and rigidly enforced to ensure that the public roads in the immediate vicinity of the blast are closed to all traffic during the blast when blasting within 600 feet of a public road. For all other blasts, public roads may be blocked for blasting when best blasting practices deem necessary.
32. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.
33. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the special permit plat may be used to fulfill this requirement.
34. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environmental and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients and alkalinity.
35. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.
36. The water/oil separator system shall be a totally closed system. There shall be no discharges of water, oil or other waste from the facility. Sludge materials which are removed in the cleaning of the facility shall be disposed of in accordance with applicable local, state and federal requirements.
37. The applicant shall ensure that the siltation pond located on the south side of Route 29 is functioning in accordance with Best Management Practice (BMP) standards, as determined by DEM.
38. The emergency spill response and containment plan developed by the applicant to address accidental spills of any hazardous substances stored on the premises shall be submitted to and approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
39. Special Permit Amendment, SPA 81-S-064-8 is granted for a period of five (5) years from the date of approval*, with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

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

not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of *approval unless the use has been established 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. Hammack made a second motion to include Luck Stone Corporation's 1996 Annual Report for the record. The motion was seconded by Messieurs Kelly and Pammel and carried by a 6-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 34, February 24, 1998, (Tape 1), Scheduled case of:

9:30 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, A 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES. CONTINUED FROM 3/11/97 TO ALLOW APPLICANT TO FILE A SPECIAL PERMIT OR VARIANCE. DEF. FROM 9/16/97 AND 10/14/97)

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. Dennis E. Burke, 5329 Black Oak Drive, Fairfax, Virginia, replied that it was.

After reaffirming his affidavit, Mr. Burke requested a deferral of the public hearing to allow the application for special permit use he recently filed to be processed. In response to Mr. Kelley's question, he acknowledged staff's recommendation for dismissal submitting that, if permitted additional time, the matter would become moot and he would withdraw his appeal. He explained that site engineering and personal health problems caused the delay of this case's resolution. In response to Chairman DiGiulian, he claimed that a month was sufficient time to resolve all issues.

William Shoup, Deputy Zoning Administrator, stated staff's objection to continuing the case pointing out that history had shown that Mr. Burke only took action when a public hearing date was imminent. Mr. Shoup acknowledged that the single remaining issue was the special permit for an error in building location. He recommended dismissal but noted that staff would suspend enforcement action if Mr. Burke demonstrated serious and diligent efforts in pursuing the special permit. Mr. Shoup explained the actions necessary for the application's processing and the usual time-frames indicating that a feasible public hearing date would be late May.

Commenting that the case has been before the BZA for the fifth time, Mr. Kelley moved to accept Mr. Shoup's recommendation to dismiss and because it appeared that Mr. Burke was pursuing required procedures, and that staff would withhold enforcement action.

Mr. Pammel seconded the motion.

Mr. Dively commented that, if staff withheld enforcement action on its own discretion, that was considered a discretionary action whereby staff had the option to change its mind, and if, as the applicant had professed, the permit was being properly pursued, the possibility of enforcement should be retained by a deferral of the application.

Mr. Shoup, responding to Mr. Ribble's and Mr. Hammack's questions, explained the events and dates that transpired since Mr. Burke submitted his special permit application in October, 1997. He briefly itemized the subsequent activities that have transpired between the appellant and staff concerning staff's suggestions, law requirements, the applicant's plat deficiencies, and the issues of the Modification of Plat Requirement necessary to facilitate Mr. Burke's application.

Discussion followed among the Board members and Mr. Shoup concerning application processing time-frames, Mr. Burke's Letter for Consideration, the County's requirement for topography maps, and the frequency of Requests for Modifications that are filed.

Mr. Hammack commented that he is sympathetic with the motion to dismiss, but after taking in to consideration the problems experienced by Mr. Burke's, both health and with his application processing, he was inclined to support Mr. Burke's request for a continuance. Mr. Hammack stated that a date should be set for the public hearing, hold the hearing, and dispose of all the issues at that time. Mr. Hammack submitted a substitute motion to defer Appeal, A 96-B-043, to the morning of June 2, 1998.

Mr. Ribble seconded the motion commenting that he believed that both the appellant and staff were factors in the delay but that the resolution appeared to be within a month.

Mr. Kelley pointed out that the circumstances of the delays, he would attribute to Mr. Burke and his apparent reluctance to work with the County.

The motion to defer passed by a 4-2 vote with Messieurs Kelley and Pammel opposed.

Ms. Langdon pointed out that a date for the special permit can not be set until its accepted but a date in June probably could accommodate both applications.

Mr. Dively then moved to set the date for deferral to June 2, 1998 at 9:30 a.m. which should allow sufficient time for approvals and proper submissions of both applications. Mr. Hammack seconded the motion which carried unanimously by a 5-0 vote with Mr. Ribble not present for the vote.

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9:30 A.M. NATIONSBANC MORTGAGE CORPORATION, SUCCESSOR BY MERGER WITH BOATMEN'S NATIONAL MORTGAGE COMPANY, A 1997-PR-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that an existing dwelling which occupies portions of Lots 12A and 13A of Section 4 of the Pine Ridge Subdivision does not meet the 20 foot minimum side yard requirement from newly created lot line and therefore, is in violation of Par. 1 of Sect. 2-307 of the Zoning Ordinance. Located at 3712 and 3716 Prosperity Ave. on approx. 42,000 sq. ft. of land zoned R-1, Providence District. Tax Map 59-3 ((6)) 13A; 59-1 ((5)) 12A. (DEF. FROM 9/30/97)

Mr. Dively recused himself from this appeal's determination.

William Shoup, Deputy Zoning Administrator, presented staff's position as set forth in the memorandum dated February 11, 1998. He explained that the issue concerned two lots on record, located in the Pine Ridge Subdivision, zoned R-1, developed with a one-story, brick, single family home, with the dwelling at straddling the lot line between lots 12A and 13A. Mr. Shoup stated that a December, 1988, resubdivision redivided the original lots 12 through 16, reducing those 5 lots into 4, becoming 12A through 15A, with new lot lines delineated which caused one house to come within 9 feet of the lot line. The Ordinance required a 20-foot minimum side yard, he reported, quoting the pertaining Zoning Ordinance language. He called the Board's attention to issues cited in the staff report concerning the resubdivision plat, the fact that the existing structure was not shown on that plat, the requirements of the Subdivision Ordinance, the proposed construction of a new dwelling on each of the four new lots, and the submission of a Public Improvement Plan and a Grading Plan to DEM, neither of which were approved. Mr. Shoup, corrected for the record, that the ingress/egress easement shown on the plat was vacated in December 1990, but noted that it did not change the fact that the dwelling remained in violation of the minimum side yard requirement. Mr. Shoup requested that the Board uphold staff's decision in the appeal.

Grayson P. Hanes, Esquire, 3110 Fairview Park Drive, Suite 1400, Falls Church, representing the appellant, Nationsbanc Mortgage Corporation, explained that he replaced Mr. McBride, who was ill. Mr. Hanes requested that the Board defer the appeal's decision and resolve the circumstance that the Notice of Violation, required by law to be served to all principles, was served to only one of the property owner's, Mr. Robert D. Kelly, and not the other property owner, Lockewood Associates. He submitted that the issue in contention was the requirement to assure that notices are served, with receipt acknowledged, not merely mailed. He explained that Nationsbanc obtained title to lot 13A in January 1998, when Lockewood Associates had lost it through foreclosure, that a variance request was immediately filed but had not yet been accepted, and that his client filed the appeal as an aggrieved party because, at that time, they were the note holders. In summary, Mr. Hanes stated, he was requesting that the necessary notices be served, and that both applications, the variance and the appeal, be heard together. He responded to Mr. Pammel's question regarding the retention or razing of the existing dwelling, whether appropriate variances would be filed, and the filing of the appeal.

Mr. Shoup explained the issuance of the June 12, 1997, Notice of Violation letters, the persons and entities served and at what addresses, the methods served, and the receipt/acceptance of said notices.

Mr. Hanes explained his understanding of the procedure to serve the Notice of Violations, to whom, and to which addresses. He maintained that the notices were not in compliance with Ordinance requirements as Lockewood Associates had not been served nor had an attempt been made to serve them. In response to Chairman DiGiulian's question, he explained that the reason he was requesting the variance application be heard along with the appeal was that in the event the Board found a violation, the variance would resolve it.

Mr. Shoup explained the County's method and procedures for serving violation notices and those specifically undertaken with regards to this appeal along with the reasoning for the particular sequence of actions taken.

Mr. Hanes pointed out the address differences and the method of serving to each address.

Chairman DiGiulian called for speakers who wished to address the issue of deferral.

Mr. Dennis Rice, owner of an adjoining property, expressed his belief that the Kelleys owned one lot and that the other lot was owned by Lockewood Associates which was Mr. and Mrs. Kelley. He believed that the Kelleys had received the notice but refused to accept it. Mr. Rice voiced his frustration over the deferrals. He pointed out that the bank was long aware of the property's zoning and violation status as title work was performed.

There being no further speakers or questions or comments by the Board, Mr. Hammack proceeded to make a motion. Commenting that Mr. Hanes raised interesting and technical arguments, that it was confusing regarding the notices and to whom and how the notices were served, Mr. Hammack moved to defer the decision on both the appeal and the variance application to June 2, 1998.

Chairman DiGiulian stated that he could not support the motion because Nationsbanc had been a party for some time regarding the disposition of the appeal. He also believed that scheduling the appeal along with the variance was inappropriate because the two were not associated as the appeal was of the Zoning Administrator's decision that the house was too close to the lot line and the variance would permit the house to remain. Chairman DiGiulian believed the appeal should be decided and that it warranted closure.

Discussion followed among Board members, DiGiulian, Hammack, Kelley, Pammel, and Mr. Hanes, Mr. Rice and Mr. Shoup concerning the merits of and opposition to a deferral, the pursuit of a variance application, the association of the appeal and variance, the problem with the title, Nationsbanc as an aggrieved party, and the Ordinance requirements regarding serving Notices of Violation. It was noted that the property was currently owned by Banker's Trust Company of California and that a new Notice of Violation should be sent to that party. Mr. Hanes represented, for the record, that he would accept service of a Notice of Violation for Banker's Trust Company.

Chairman DiGiulian called for clarification of the motion before the Board.

Mr. Pammel moved to defer the decision on A 1997-PR-022 to June 2, 1998. The motion was seconded by Mr. Hammack and carried by a unanimous vote of 4-0; Mr. Dively recused himself and he and Mr. Ribble were not present for the vote.

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Page 37, February 24, 1998, (Tape 2), Scheduled case of:

9:00 A.M. GABRIEL E. NASSAR, JR. & ANN P. GAMBER, VCA 96-M-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 96-M-023 to permit accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 13.0 ft. from front lot line. Located at 6436 Lakeview Dr. on approx. 21,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 374.

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. Gabriel Nassar, Jr., 6436 Lakeview Drive, Falls Church, replied that it was.

Heidi Powell, Staff Coordinator, presented staff's position as contained in the staff report dated February 17, 1998. She stated that the Ordinance prohibits any accessory structure located in any minimum required front yard on any lot or in any front yard on any lot containing 36,000 square feet or less.

Mr. Nassar explained that his application before the Board was to amend his January 7, 1997, variance that had approved his garage. He mused that if he were aware of the zoning process, he would have applied for the addition requested today, a wood workshop room, under that variance. He responded to Mr. Hammack's questions concerning his lot's topography, the proposed addition's placement, the utilization of certain power tools, the proximity of his closest neighbor, and he clarified that the workshop would sit directly under the garage. Mr. Nassar maintained that he enjoyed good relations with his neighbors and would be conscientious of noise from the power tools

Discussion followed between Messieurs DiGiulian, Hammack and Pammel concerning noise decibels.

There being no further questions or comments from the Board and there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VCA 96-M-023 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 17, 1998.

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

GABRIEL E. NASSAR, JR. & ANN P. GAMBER, VCA 96-M-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 96-M-023 to permit accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 13.0 ft. from front lot line. Located at 6436 Lakeview Dr. on approx. 21,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 374. 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 24, 1998; and

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

1. The applicants are the owners of the land.
2. The Board of Zoning Appeals approved the original variance for the location of an accessory structure, a garage, in the front yard with a side lot line of ten (10) feet.
3. The request is for a basement, to be used as a workshop, to be built underneath the original garage structure, the latter having been previously approved by the BZA and is part of the application.
4. Due to topographic conditions, the slope of the property from front to back, the sanitary sewer easement, and the lake, there is no other place to put the structure.
5. The applicant has consulted and worked with his neighbors, and they have no objections.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage and workshop) shown on the plat prepared by John A. Kephart, Certified Land Surveyor, dated January 24, 1994, revised by Robert M. Gurney, Architect, received December 11, 1997, 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 and workshop 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 of vote of 4-0 with Messieurs Dively and Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 319, February 24, 1998, (Tape 2), Scheduled case of:

Request for Additional Time to Commence Construction Approved by
Special Permit, SP 92-M-040 & Variance, VC 92-M-068, A & K Family Recreation Center

There being no objection, Mr. Kelley moved to accept staff's recommendation to approve the request for twelve (12) months of additional time to January 15, 1999. Mr. Pammel seconded the motion which carried unanimously by a 4-0 vote with Messieurs Dively and Ribble not present for the vote.

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Page 319, February 24, 1998, (Tape 2), Scheduled case of:

Out-of-Turn Hearing Request or
Steven A. Darragh, VC 98-B-017 & SP 98-B-003

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board of several available dates to reschedule this item.

Commenting that the present situation was caused by a previous property owner and was not the fault of Mr. Darragh, who was trying to resolve it, Mr. Pammel moved to accept an out-of-turn hearing date of April 14, 1998. The motion was seconded by Mr. Kelley and carried unanimously by a vote of 4-0 with Messieurs Dively and Ribble not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:22 a.m.

Minutes by: Paula McFarland

Approved on: July 7, 1998


Susan C. Langdon, Chief

Special Permits & Variance Branch, BZA



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 3, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 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 321, March 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DAVID ARNOLD, VC 97-L-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 4505 Eaton Pl. on approx. 10,905 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17))(G) 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. David Arnold, 4505 Eaton Place, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit the construction of an attached garage 6 feet from the side lot line. A variance of 6 feet was requested. The garage would be constructed in place of an enclosed screen porch.

Chairman DiGiulian asked staff if the screen porch was built with a variance. The applicant replied that the enclosure was built in 1980, that it was there when he purchased the house in 1989, and that he assumed that the previous owners applied for a variance before they got their building permit. Staff stated that a building permit was originally obtained for a carport which was then enclosed as a screen porch and that no variance was obtained at the time.

David Arnold, the applicant, stated that the purpose for enclosing the garage was to have a secure place for their automobiles and to have a secure access point.

Chairman DiGiulian asked the applicant if the garage would extend further into the side yard. The applicant replied that it would not.

There were no speakers either in support or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 97-L-127 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID ARNOLD, VC 97-L-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 4505 Eaton Pl. on approx. 10,905 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17))(G) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1998; and

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

- 1. The applicant has met the nine required standards for a variance.
- 2. The structure has been there in some form since the early 1980's.
- 3. The structure is in harmony with the intent and spirit and purpose of the Ordinance and is 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an attached garage shown on the plat (labeled as existing screen porch), prepared by Thomas F. Conlon Jr. of Cervantes and Associates, dated October 3, 1997, signed October 9, 1997 and November 19, 1997, 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. Pammel seconded the motion which carried by a vote of 5-0-1. Mr. Dively abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 323, March 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARGARET KELLY AND REO, L.C., VC 97-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots and four outlots with proposed lots 23B, 23C, and 23D having a lot width of 6.0 ft. and 23A having a lot width of 42.99 ft. Located at 9038 Leesburg Pi. on approx. 5.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 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. Gregory Riegle, McGuire, Woods, Battle & Booth, 8280 Greensboro Drive, Suite 900, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The application was originally filed in the names of Margaret Kelley and the Estate of Holbert Farthing but was amended changing the applicant to Margaret Kelley and REO, L.C. The applicant originally requested approval of a variance to permit the subdivision of one lot into five lots and one outlot with proposed lots 23B, 23C, 23D and 23E with lot widths of 6 feet and lot 23A with a lot width of 92 feet. Staff noted outstanding issues pertaining to a pipestem lot development with direct access to Leesburg Pike, relocation of a storm water detention pond and tree preservation or restoration on site. In staff's evaluation, the application did not meet standards 4, 5, and 6 pertaining to hardship. The applicant could have subdivided the property without the necessity of a variance by providing a public street on the site.

The Addendum distributed on December 23, 1997, showed a variance plat with a proposed pipestem located on the northwest side of the property rather than the northeast side. The hearing was continued in order to give staff an opportunity to review the latest submission. Staff received another revised variance plat and an amended variance application. The applicant requested subdivision of one lot into four lots and four outlots with lots 23B, 23C and 23D having lot widths of 6 feet and lot 23A with a lot width of 42.99 feet.

The revised plat reduced the number of proposed lots from five to four and provided for two storm water detention ponds. Staff stated that the application did not meet the standards required for approval of a variance. Staff stated that the property could still be subdivided to provide five lots without approval of a variance by providing a public street.

Mr. Riegle, attorney for the applicant, stated that the property had an exceptional narrowness. He stated that the BZA had already approved two identical variances on either side of the property and the applicant only wanted to create something identical. The proposal would be compatible to what was located on either side of the property. The density had been reduced, and the applicant had worked with the community to design the size of the lots, location of the dwellings, and peripheral buffering. The surrounding Woodside Estate communities supported the application. All outstanding issues were resolved.

Mr. Pammel asked Mr. Riegle if he had a representation of how the proposal would look with a public street. Mr. Riegle replied that he did and submitted that to the Board. Mr. Riegle stated that the community preferred to see four lots. It was compatible to what was in the community, preserved the existing vegetation and the applicant was satisfied.

Tom Dougherty, 1314 B Alps Drive, McLean, Virginia, spoke in support of the application, stating that the applicant had worked with the community to resolve all issues and the proposal was consistent with the neighborhood.

Dale Johnston, 1314 A Alps Drive, McLean, Virginia, spoke in support of the application. She stated that her property would be impacted because her house was very close to the property line. If a public road instead of a pipestem were put in place, it would be a few feet from her home. She stated that the applicant had been more than agreeable in addressing issues and concerns of the community. The applicants had addressed the

environmental impact, the aesthetics, and privacy issues. She stated that she wanted to see the rural character maintained. She also stated that pipestemming was more preferable to her than a public road.

There were no speakers in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Pammel stated the difficulty that he usually had with this type of case because of the issues raised by staff and the language in the Ordinance, but said there were mitigating circumstances that overcame the issues raised by staff in the staff report. He stated that the applicant had done their job and the proposal was environmentally sensitive because of the pipestem approach as opposed to a public street. Mr. Pammel stated that it had always been his preference that the Board be allocated the authority to remain subdivisions through a special use permit rather than a variance. Mr. Pammel made a motion to approve VC 97-D-097.

Mr. Hammack opposed the motion. He stated that he agreed with Mr. Riegle's logical arguments. He agreed with Mr. Pammel regarding the fact that the Board should have the authority through a special permit rather than a variance to grant the subdivision. Mr. Hammack stated that staff's points were well taken, that the property could be developed with a public road and that the Board should not superimpose what they felt was a better design over the Ordinance. He stated that there were certain benefits accomplished with public roads rather than pipestem. The applicant, according to Mr. Hammack, still needed to show that a hardship existed. He stated that if the property could be developed with a public road, then it should be done that way.

VC 97-D-097 was approved for the reasons stated in the Resolution.

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

MARGARET KELLY AND REO, L.C., VC 97-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots and four outlots with proposed lots 23B, 23C, and 23D having a lot width of 6.0 ft. and 23A having a lot width of 42.99 ft. Located at 9038 Leesburg Pi. on approx. 5.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((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 March 3, 1998; and

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

1. The application is environmentally sensitive and can be done through the pipestem approach as opposed to a public street.
2. The applicant has presented testimony that they comply with the nine prescribed criteria for the granting of a variance.
3. The width of the lot is very narrow.
4. There are very unusual circumstances surrounding the application property.
5. The properties on either side of the applicant have been permitted in the past to develop in a similar fashion to that requested 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of lot 23 as shown on the plat prepared by VIKI (Robert R. Cochran, land surveyor) dated January 27, 1998 as revised through February 13, 1998. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The applicant shall dedicate right-of-way to 114 feet in width from the centerline of Route 7, and additional ancillary easements with a width of 15 feet in fee simple to the Board of Supervisors at the time of subdivision approval or upon demand from VDOT, whichever occurs first.
3. At the time of subdivision plan review, the applicant shall demonstrate that all lots or portions of lots located within the 65-70 dBA Ldn highway noise impact contours shall be developed using construction incorporating the following acoustical attributes:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory STC rating as walls.

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

In order to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof, shall be provided for those outdoor recreation areas including rear yards, that are unshielded by topography or built

structures. If acoustical fencing or walls are used, they should be architecturally solid from the ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

Other methods of mitigating highway noise may be used if it is demonstrated through an independent noise study subject to the review and approval of DEM, that these methods will be effective in reducing exterior noise levels to 65 dBA Ldn or less, and interior noise levels to 45 dBA Ldn or less.

4. Prior to approval of the subdivision plat, the applicant shall obtain septic system permits from the Fairfax County Health Department for all proposed sites as shown on the approved variance plat. If septic system permits are not approved, the variance shall be rendered null and void.
5. At the time of subdivision plan review, the applicant shall submit a landscape plan for the review and approval of DEM which shows a balanced mixture of groundcover, shrubs and trees in addition to the 20 percent tree coverage required for each lot by the Zoning Ordinance and the Public Facilities Manual, to complement the existing natural vegetation and mature landscaping present on surrounding residential sites.

Pursuant 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 5-1. Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 326 March 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CAROL D. CLANCY & DAVID G. RATHBUN, VC 97-B-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.1 ft. from street line of a corner lot. Located at 4047 Hunt Rd. on approx. 27,060 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((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. David Rathbun, 4047 Hunt Road, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit the construction of a room addition 33.1 feet from the street line of the corner lot. A variance of 6.9 feet was requested.

David Rathbun, the applicant, stated that he had an unusual lot, that his property had two front yards because it is a corner lot. The landscaping would obscure the addition from any neighbors. All his neighbors supported the application. He stated that his family had outgrown the house.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 97-B-129 for the reasons stated in the Resolution.

and

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

1. The applicant has met the nine required standards for a variance.

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

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

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

1. This special permit is approved for the location of an addition (sunroom) shown on the plat prepared by Rice Associates, P.C. dated June 6, 1996, revised by Mary Jane Vanderdys through December 15, 1997, 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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 335, March 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MONTE P. ASBURY, JR. T/A THE CUE CLUB, SPA 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 95-M-011 for billiard hall to permit continuation and expansion of use and modification to development conditions. Located at 7014-7018 Columbia Pi. on approx. 5.30 ac. of land zoned C-6, HC, SC. Mason District. Tax Map 60-3 ((1)) 21, 21A, 21B.

Chairman DiGiulian noted that the agenda stated that the notices were not in order. Staff suggested April 2, 1998, as a new hearing date.

Mr. Kelley made a motion to defer the hearing to April 2, 1998. Mr. Hammack seconded. Mr. Kelley asked for a representative of the applicant to explain why the notices were not in order. Staff replied that the applicant misunderstood the instructions and only notified a maximum of ten property owners surrounding his property when, in fact, he needed to notify all of the adjacent property owners.

The motion carried by a vote of 6-0.

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9:30 A.M. FURNACE ASSOCIATES INC. AND S.W. RODGERS COMPANY, INC., A 1997-MV-031 and A 1997-MV-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants have allowed the establishment of a use in which concrete and asphalt debris is crushed and processed at the Lorton Landfill, the processed concrete and asphalt products are offered for sale, and from which dust is being emitted from the site, all in violation of Zoning Ordinance provisions. Located at 10001 Furnace Rd. on approx. 263.21 ac. of land zoned R-1. Mt. Vernon District. Tax Map 113-1 ((1)) 5.

William Shoup, Deputy Zoning Administrator, made staff's presentation as outlined in the staff report. There were several issues in the appeal; the first being the operation of concrete and asphalt crushing and processing; second being an operation involving the processing of stumps and wood debris into mulch and wood chips. The production from both operations are then offered for sale. The dust generated from the landfill site was another issue involved in the appeal.

The property is owned by Furnace Associates, Inc. The concrete/asphalt processing is conducted by S. W. Rodgers Company, Inc., through its division of NOVA Recyclers. Mr. Shoup indicated that there were separate Notices of Violation sent to each party at different times, and that was the reason for the two appeals which were scheduled concurrently.

He indicated that the debris landfill was authorized pursuant to Board of Supervisor's (BOS) approval of a special exception which was approved on November 16, 1981, under SE 80-LV-061. There were several questions before the Board in the appeal, one being whether the concrete/asphalt process should be considered an integral part of the landfill operation such that it did not need to be specifically reviewed and approved by the BOS; and, the other question before the Board was whether the wood processing operation should be shown on an approved site plan and whether the concrete/asphalt processing operation needed site plan and Non-Residential Use Permit approval. The last question before the Board was whether the operation on the site was being conducted in accordance with Condition #39 of the special exception approval which required that dust control measures be undertaken to prevent the generation of appreciable dust from the land fill site.

Mr. Shoup stated that the concrete/asphalt processing operation was an intense activity. He submitted photographs to the Board which showed the equipment used for the process noting that a significant portion of the site had been devoted to the activity. He referred to aerial photographs of the site which had been presented in the staff report. Mr. Shoup stated that the activity was not identified in the special exception application and not specifically reviewed by the BOS. Condition #2 of the special exception approval limited activity to what was shown in the application.

He indicated that even though it is typical for concrete debris to be deposited in a landfill operation, the way the appellant was processing the material was significantly different. The activity was determined to be an accessory use to the landfill and should have been specifically identified in the special exception application and reviewed and approved by the BOS. Mr. Shoup stated that the position taken was consistent with similar activity proposed at the Luck Stone quarry site which was subject to the BZA's review and approval in a special permit amendment.

He noted that the wood processing operation was permitted by the special exception conditions. The only issue concerning the wood processing was that site plan approval was needed. The Zoning Ordinance requires site plan approval for such uses. Site plan approval had never been granted for the landfill operation. The only plan on record was the landfill under Chapter 104 of the County Code and Mr. Shoup noted that the landfill plan did not show concrete/asphalt or wood processing operations.

With respect to the dust, inspectors had observed substantial amounts of dust being generated from the site predominately from the concrete/asphalt processing. Staff felt that adequate measures had not been taken by the appellant to control the dust which is in violation of Condition #39.

In conclusion, Mr. Shoup stated that while the activities were worthwhile and that staff was impressed with the operations, the appellant needed a special exception approval by the BOS to conduct those activities.

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1998; and

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

1. The applicant has presented testimony before the Board.
2. The applicant has met the nine standards required for a variance.
3. The lot is narrow.
4. The lot is a ½ acre lot in a 5 acre district which the County downzoned several years ago.
5. To impose the setback standards and side yard standards is a the hardship on this lot.
6. The applicants presented a good case for the granting of the variance.
7. The size of the required septic field precludes an alternative location for the garage.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage) shown on the plat prepared by Elizabeth L. Thurber, P.E., dated October 21, 1997, 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 proposed 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 334, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARY JANE VANDERDYS, SP 97-Y-060 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to minimum yard requirements of the R-C District to permit construction of addition 14.2 ft. from side lot line. Located at 6514 Trillium House Ln. on approx. 13,342 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 53-3 ((4))(2) 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. Mary Jane Vanderdys, 6514 Trillium House Lane, Centreville, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to minimum yard requirements for R-C lots to permit construction of an addition, a sun room, to be located 14.2 feet from a side lot line. A modification of 5.8 feet was requested.

Ms. Vanderdys, the applicant, stated that some of the existing houses that were built six years ago had sun rooms similar to her proposal and their side yards were smaller than what she proposed. She also stated that other permits had been granted on her street.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve SP 97-Y-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY JANE VANDERDYS, SP 97-Y-060 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to minimum yard requirements of the R-C District to permit construction of addition 14.2 ft. from side lot line. Located at 6514 Trillium House Ln. on approx. 13,342 sq. ft. of land zoned R-C, WS. Sully District. Tax Map 53-3 ((4))(2) 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 March 3, 1998;

Page 331, March 3, 1998, (Tape 1), G. JONATHAN & GABRIELE K. GREENWALD, VC 98-D-002,
continued from Page (330)

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1998; and

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

1. The tree growth, the way the property is laid out and the topographic conditions make it a natural location to place the garage.
2. The proposed setback allows room for maintenance between the lot line and the garage.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage) shown on the plat prepared by Arif H. Hodzic, Certified Architect, dated December 29, 1997, 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. 18-4 07 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PAUL & DEE MOORE, VC 98-S-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line. Located at 11419 Fairfax Station Rd. on approx. 21,781 sq. ft. of land zoned R-C, WS. Springfield District. Tax Map 76-2 ((4)) 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. Paul Moore, 11419 Fairfax Station, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an accessory structure, a garage, to be located 5 feet from a side lot line. A variance of 15 feet was requested.

Paul Moore, the applicant, stated that he had lived on the property for 18 years. In that time, he had taken down one residence and put up a new one. The original location of the garage was moved because the septic field size was increased. It became necessary to move the location also to meet county codes. The only other place to construct the garage would have been in the middle of his back yard. His neighbors were in support of the application.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 98-S-004 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL & DEE MOORE, VC 98-S-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line. Located at 11419 Fairfax Station Rd. on approx. 21,781 sq. ft. of land zoned R-C, WS. Springfield District. Tax Map 76-2 ((4)) 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

BARBARA & MICHAEL C. MOZUR, VC 97-B-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line. Located at 4321 Argonne Dr. on approx. 15,012 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 86. 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 3, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for a variance.
3. The carport already exists; the applicants are just enclosing it.

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

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

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

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

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

1. This variance is approved for the location of an addition (carport enclosure) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated November 11, 1997, submitted with this

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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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. G. JONATHAN & GABRIELE K. GREENWALD, VC 98-D-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line. Located at 1917 Kenbar Ct. on approx. 20,007 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 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. Arif Hodzic, 4300 Evergreen Lane, Annandale, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an accessory structure, a garage, 6 feet from a side lot line. A variance of 9 feet was requested. Staff submitted to the Board two letters of support that were omitted from the staff report.

Mr. Hodzic, agent for the applicant, stated that it was the applicants' desire to construct a two-car garage where there was already an existing paved area. The topography is unusual, which was the reason for the proposed location. He stated that there were several other houses in the neighborhood that have already obtained variances and some of them were closer to the property line than the applicant's requested variance. The neighbors were in support of the application.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to approve VC 98-D-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

G. JONATHAN & GABRIELE K. GREENWALD, VC 98-D-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line. Located at 1917 Kenbar Ct. on approx. 20,007 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 17. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

CAROL D. CLANCY & DAVID G. RATHBUN, VC 97-B-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.1 ft. from street line of a corner lot. Located at 4047 Hunt Rd. on approx. 27,060 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((4)) 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 March 3, 1998; and

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

1. The applicants have met the nine required standards for a variance.
2. The house was built 45 years ago and the placement on the lot was such that the applicants needed a variance.
3. The lot has two front yards.

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

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

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

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

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

1. This variance is approved for the location of an addition to the single family dwelling shown on the plat prepared by Kenneth W. White, dated August 25, 1997, as revised through December 17, 1997, 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 to the dwelling shall be architecturally compatible with the existing dwelling.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 328, March 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BARBARA & MICHAEL C. MOZUR, VC 97-B-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line. Located at 4321 Argonne Dr. on approx. 15,012 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 86.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Mozur, 4321 Argonne Drive, Fairfax, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an addition to enclose an existing carport 4.7 feet from a side lot line. A variance of 10.3 feet was requested.

Barbara Mozur stated that there was an existing carport which existed when the property was purchased in 1986. Her family has since outgrown the house and needs the additional space the carport would provide. She stated that there was no opposition to the application.

Mr. Kelley wanted to know if the footprint of the slab was being increased. The applicant stated that it was not.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve VC 97-B-128 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

Mr. Hammack wanted to know why, if a site plan was required, was it not followed up on. Mr. Shoup stated that he could not speak on why it was not followed up on before, but that the reason it was being addressed at present was that they were faced with the issues and realized after looking at the Ordinance that a site plan was required. Mr. Hammack wanted to know why DEM would have approved a landfill plan without site plan approval. He also wanted to know the difference between a site plan and landfill plan. Mr. Shoup stated that there were specific requirements for a landfill plan which were addressed in Chapter 104 of the Ordinance and the PFM that addressed landfill plans. A landfill plan required a detailed narrative. A site plan is the typical Zoning Ordinance requirements where all structures, technical requirements, improvements, and topography have to be shown. Mr. Hammack noted that according to the staff report, DEM inspected the site each year since it had been in operation. Mr. Shoup stated that he was uncertain as to why a site plan was not required.

Mr. Hammack read a portion of the operating plan prepared by William Gordon Associates, dated 1982. The plan described concrete, wood and steel as acceptable waste disposal for the use. Mr. Hammack felt that the plan encompassed the activities cited in the violation. He stated that over the past 10 years, DEM had not filed any violations which in fact indicated that the appellant had not been operating in compliance. Mr. Shoup stated to Mr. Hammack that what he read out of the plan, did not address the concrete or asphalt debris processing. He noted that the landfill plan was submitted and approved after the special exception was approved by the BOS.

Mr. Hammack wanted to know why DEM would approve an operating plan that was not allowed under the Ordinance. Mr. Shoup stated that they did not, that concrete/asphalt debris processing was not approved. The concrete/asphalt processing operation was only a few years old. The wood processing began earlier on in the 1980's.

Mr. Hammack wanted to know how the inspectors determined that dust from the site was landing off site. Mr. Shoup replied that there was no scientific analysis done, but that it was done from observations. Mr. Roger Sims, Supervising Field Inspector with the Zoning Enforcement Branch, stated that he observed dust flying from the machinery to the nearby house. He went on site and observed dust on the vehicles and vegetation in the area.

Frank McDermott, attorney for the appellant, submitted to the Board a notebook presenting additional information and photos. He stated that the issue before the Board was whether or not the activity of accepting construction rubble and then salvaging from it a combination of steel, concrete and asphalt, was an activity that was part of the debris operation or an accessory use. He submitted that it was part of the landfill debris operation. He pointed out to the Board a tax map indicating the extent of the property and the area in which the complaint came from. Mr. McDermott stated that the prevailing winds came from the northwest and did not blow in the direction of the complainant's property.

Mr. McDermott read the County Code definition of a debris landfill. Sect. 104-2-5B8 described or talked about a detailed operating plan which stated that no salvaging would be permitted unless it were a part of the operating plan. According to Mr. McDermott, the salvaging was part of the operation and use. The whole operation, which is 250 acres, is all a part of the landfill operation. The concrete and asphalt that comes into the landfill is utilized on the roadways on site. The equipment being used had only been in existence since 1996. The actual salvaging and reuse of the concrete and asphalt had always been a part of the operation since the very beginning.

Mr. McDermott explained that the only way that pipes and metal could be separated from the concrete would be by the pounding and crushing operation. He referred to his presentation notebook and pictures of the equipment being used presently and the piles of debris at the site. He stated that all of the equipment had wheels on them so that they could be relocated in order to utilize the area in which they were sitting for more fill. He referred to a series of pictures that showed the wood recycling operation. Mr. McDermott pointed out pictures which showed elements of the water sprinkling systems and a sign on a tree across the street from the site where the crushing operation took place. Mr. McDermott noted that there was no dust on the sign, the plastic or the tree. Mr. McDermott stated that there was insufficient evidence to determine that if dust was found on the Lampiear property, that it came from the site.

Mr. McDermott read from Exhibit 6 which was the affidavit from Elmer Weiser the operator of Furnace

Associates for the past 25 years. He indicated that the affidavit confirmed Furnace Associates' position that the salvaging of reusable items such as concrete, asphalt and metal had always been a critical and integral component of the debris land fill operation. The material is just separated more carefully and then the crushing and salvaging process takes place.

Mr. McDermott suggested that there was no processing or anything added on to what was going on at the landfill, just a separating, breaking, and crushing which was part of the landfill operation.

Mr. McDermott also discussed differences between the appellant and the Luck Stone operation

Mr. Dively wanted to know what was done about dust. Mr. McDermott answered that there was a sprinkler system and a built-in mist system to suppress dust. There is a water tank on the site at all times which is used throughout the landfill and the equipment has a dust suppression system. The appellant also drilled a new well in the early Spring of '97 so that there would be a water supply.

Hank Gordon, President of William Gordon Associates, the original design engineer of the project, spoke in support of the appellant. He stated that the landfill plan was the site plan which contained all the elements required by Article 17 for a site plan. It was referred to by DEM as a site plan. There had been no question as to whether or not it was a site plan until recently. The operation is a debris operation with heavy equipment throughout the site. Mr. Gordon pointed out that asphalt is concrete. He stated that the material had always been salvaged. The reason why the facility was such a clean operation was because the appellant used salvaged materials to construct the roadways used to move the materials and not the graded areas where the dirt and mud would collect on the tires which would then be carried on to the streets.

Mr. Gordon stated that he did not see the need to have a permit for the equipment used other than what was already obtained by the site plan because the equipment is portable.

Mr. Hammack wanted to know if DEM had ever asked for a site plan other than what the appellant filed as the land fill plan. Mr. Gordon replied that they did not.

Erma Clifton, 8912 Ox Road, Lorton, Virginia spoke in opposition of the appeal. She stated that the landfill was operating as a retail establishment, processing and reselling concrete, asphalt and wood products. Over the years the community has had many complaints. The appellant had not worked hard enough to remedy the concerns about dust, dirt noise, traffic and limiting the hours of operation. The operation needed a complete review before any decisions were made. The landfill had taken on a completely new function. The recycling aspect of the operation was not in question but Ms. Clifton asked that it be done in a way that would not cause undue hardship to neighbors.

Hilton and Sarah Lamphiear, 10225 Furnace Road, Lorton, Virginia, spoke in opposition to the appeal. The Lamphiears indicated that they had been opposed to the landfill since its inception. The activity taking place on the landfill, they stated, was illegal. They spoke of an illegal entrance to the landfill. The appellants were opening for business before operating hours. In '96 S.W. Rodgers started hauling heavy concrete blocks creating traffic problems. At one point, the recycling was piled so high, they were able to see it from the road. The dust was also a problem. The appellants have continued recycling in spite of being told to discontinue that activity. The appellants repaved part of the road by the Lamphiear's house which has caused a lot of noise. The Lamphiears stated that the only thing they wanted from the appellant was for them to follow the rules.

Robert Lundy, 8828 Ox Road, Lorton, Virginia, spoke in opposition to the appeal. Mr. Lundy asked the Board why a number of problems had not been brought before the Board previously. He made a point of saying that the wind did not blow in the same direction all the time. He stated that he had passed by the Lamphiear's house and wondered how they dealt with all the dust. The recycling, he stated, was a positive activity, but he felt that it created too much noise and dust for its neighbors. He stated that the appellants should consider reasonable mitigation for their neighbors.

Mr. Shoup addressed Mr. McDermott's comments about the size of the concrete/asphalt processing operation. He asked the Board to look at the photographs submitted to see the intensity of the operation.

The crushing and resale of the product was what was at issue. He also addressed the point about how the equipment could be relocated, and noted that was a reason why the Board of Supervisors should review the operation again because of the poential impact to neighboring properties.

Mr. Shoup pointed out that the question was not whether the operation was well run, but that the activity needed Board of Supervisors' approval. Mr. Shoup stated that although the appellants were in the business of having materials brought in to them as opposed to Luck Stone's quarry which extracts stone, that this did not give the appellants an open ended operation where certain components were not subject to review by the Board of Supervisors.

Mr. Shoup pointed out that even though there was a dust suppression system in place, it was not adequate. Condition 39 required adequate dust control measures be implemented. An inspection was done on site in August in which a lot of dust was observed.

Mr. Olawale Ayodeji, landfill inspector for DEM, indicated that when the appellant started the concrete recycling operation in 1994, dust had always been an issue. DEM had always been told by the appellant that they were in the process of obtaining a special exception. As of December of '97, the appellants had not yet submitted an application. Inspection reports dating back three years all indicated a problem with dust. Mr. Ayodeji asked the Board to take those issues into consideration when making their decision.

Chairman DiGiulian asked Mr. Ayodeji to submit to the Board any written documentation indicating the problems with dust. Mr. Ayodeji submitted his inspection reports to the Board. Chairman DiGiulian asked if Mr. Ayodeji had any documentation from the appellants to indicate that they were going to apply for an amendment to the special exception. Mr. Ayodeji stated that it was done verbally. Mr.

Mr. Dively wanted to know if there were national standards for dust and how it was measured. Mr. Ayodeji was not aware of any national standards and stated that they were in the process of being written by the EPA. Mr. Dively wanted to know if the appellants had more or less dust than other landfills throughout the state of Virginia. Mr. Ayodeji stated that the appellants, from his observation of other landfills, had a lot more dust. He stated that the appellants had an adequate sprinkler system, but that they did not use it as frequently as they should.

Mr. Dively discussed with Mr. Shoup where processing began and reclamation ended and whether the crushing of the stone to extract the metal was a process. Mr. Dively felt that that was reclamation. He said that it was possibly one in the same.

Mr. McDermott, in rebuttal, showed the Board pictures of the site on the day that Mr. Shoup made his inspection. The flag hanging from Mr. Lamphiear's house in the photograph was blowing in a westerly direction indicating that the wind was blowing from the east. Mr. McDermott suggested to the Board that the prevailing winds come from the west and he wanted to know how anyone would determine whether the dust on the house came from the trucks from the crushing operation or somewhere else such as trucks coming from Furnace Road.

Mr. McDermott addressed the separate entrances stating that it was the same entrance off of Furnace Road. The trucks used for the crushing operation were brought into the landfill. Mr. McDermott addressed Mr. Shoup's point regarding a site plan being required to show infrastructure. Mr. McDermott stated that there was no infrastructure.

Mr. Pammel asked Mr. McDermott whether the appellant sought the opinion of the Zoning Administrator in reference to whether the activity on site was a permissible use under the then existing special exception permit. Mr. McDermott replied that the appellant did not, but that they did talk with them before they implemented the wood processing. The appellant thought that the process was more of a modernization and a more effective way of doing what they had already in place. He also stated that Furnace never intended to pursue an SE and that they were never denied a permit.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination stating that the appellants had been operating within the purview of its landfill permit issued in the 1980s until recently. He agreed with the Zoning Administrator on the issue of the concrete/asphalt recrushing processing operation. The introduction of the equipment and the establishment of the use to the extent that it was being used went beyond the scope of the original special exception. Mr. Hammack felt that it should be revisited by the Board of Supervisors. He approved of the recycling and the modern techniques used, but he felt that according to the definition of a debris landfill, it was for the disposition of materials. He believed that the appellant had been trying to operate within what it believed was in compliance with the permit.

The concrete and asphalt crushing and processing, Mr. Hammack felt, was an expansion requiring site plan approval because it was a modification or alteration of an existing use. Mr. Dively wanted to know if the use could fall within the salvaging definition. Mr. Hammack stated that it probably did originally but that the present operation went beyond the scope of the original plan. He considered the concrete processing a significant addition. The introduction of the heavy equipment and the extent to which it was being utilized, was an alteration to the former special permit approval and should have gone back to the County Board.

Mr. Hammack stated that part of the purpose of intent was to protect against noise, undue truck traffic, against uncontrolled dust and debris, and to ensure conformance with the permit. Mr. Hammack felt that the testimony given indicated increased traffic and also indicated that the magnitude of the operation was much greater than in the 1980s. He stated that he had a problem with the wood processing operation because it seemed to have been more carefully contemplated with the existing special permit.

With respect to dust, Mr. Hammack stated that he did not see a definition of appreciable dust. The photographs submitted did not show conclusive evidence as to whether the dust came from the site or somewhere else.

Mr. Pammel seconded the motion.

Mr. Pammel subscribed to the comments of Mr. Hammack and commented that when the permit was issued and the special exception approved, it dealt with the salvage of limited materials. The reclamation of concrete was not done on a day-to-day basis. The definition section used the term "disposed" and also discussed salvaging. Mr. Pammel stated that it was referencing metals. He stated that the Board of Supervisors needed to review the issues again to bring it up to current standards and views of what the operation is.

The motion failed by a lack of four votes. The vote was two in favor and four opposed.

Mr. Dively then moved to overturn the Zoning Administrator's determination. He stated that he agreed with what Mr. Hammack and Mr. Pammel said except that he felt that it was permissible salvaging under the definitions given and that it was not processing. Mr. Kelley seconded. Chairman DiGiulian asked if he meant both appeals. Mr. Dively replied that he did. The motion carried by a vote of 4-2. Mr. Hammack, Mr. Pammel, Mr Ribble and Chairman DiGiulian voted for the motion and Mr. Dively and Mr. Kelley voted against. The Zoning Administrator's determination was overruled.

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Request for Additional Time To Commence Construction for
Lincolnia Private Day School, 6396 Lincolnia Road and
6365 Hillcrest Place, Tax Map Number 72-1((7))3, 4, 19
SPA 74-M-042 and VC 97-M-037

Mr. Pammel made a motion to approve the Request for Additional Time To Commence Construction Approved by Special Permit Amendment SPA 74-M-042 and VC 97-M-037, Lincolnia Private Day School to

Page 341, March 3, 1998, (Tape 1), Action Item, continued from Page (340)

February 21, 1999. Mr. Hammack seconded which carried by a vote of 6-0.

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Page 341, March 3, 1998, (Tape 1), Action Item:

Request for Intent to Defer
Appeal A 1997-MA-043, Wayne C. Goode

Mr. Pammel made a motion to defer Appeal A 1997-MA-043, Wayne C. Goode to July 7, 1998. Mr. Ribble seconded. The motion carried by a vote of 6-0.

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Page 341, March 3, 1998, (Tape 1), Action Item:

Approval of February 24, 1998, Resolutions

Mr. Pammel made a motion to approve the February 24, 1998, Resolutions. Mr. Dively seconded. The motion carried by a vote of 6-0.

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Mr. Ribble wanted to know if the Board needed to act on the memo from James P. Zook, Director, Office of Comprehensive Planning and Zofia A. Zager, Acting Director, Department of Environmental Management regarding the Development Process Customer Outreach Project. Chairman DiGiulian stated that they were supposed to but that the deadline was the end of December and that the Board did not receive it on time. Mr. Hammack stated that the memo indicated that a response is due on March 13th. Chairman DiGiulian stated that everyone else was to have theirs filled out in December.

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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: Denise Snyder, Deputy Clerk

Approved on: May 19, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

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

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 10, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:14 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 343, March 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 97-P-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.7 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3((28)) 5A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hossein Fattahi, 8723 Litwalton Court, Vienna, Virginia, said it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, gave staff's presentation as outlined in the staff report. The applicant was requesting a variance to construct an attached garage, which was an enclosure of an existing carport, to be located 7.7 feet from a side lot line. A minimum side yard of 10 feet is required in the R-4 District; therefore, a variance of 2.3 feet was being requested.

Mr. Fattahi said he would like to enclose the existing carport in order to save energy and to save his and his family's lives. He said that in inclement weather, rain or snow comes into his kitchen. He said his house was the only one in the neighborhood that did not have an enclosed garage.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 97-P-117 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOSSEIN FATTAHI, VC 97-P-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.7 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A. 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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for variance applications.
3. This applicant has rather sharply converging lot lines towards the rear of the property.
4. Only a corner of the proposed enclosure requires a variance, which is minimal.

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

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

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

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

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

1. This variance is approved for the location of a garage (enclosure of a carport) shown on the plat prepared by Richard Davis, dated October 9, 1972, revised February 24, 1973, 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. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. WILLIAM J. LAUX, III AND JOAN MARIE LAUX, VC 97-V-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line. Located at 1802 Stratford Dr. on approx. 12,804 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2))(6) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William J. Laux, III, 1802 Stratford Drive, Alexandria, Virginia, said it was.

Jennifer Smolko, Planning Intern with Zoning Evaluation Division, gave staff's presentation as outlined in the staff report. The applicant was requesting approval of a variance to permit a garage addition to be located 21.5 feet from the rear lot line. A minimum rear yard of 25 feet is required in the R-3 District; therefore, a variance of 3.5 feet was being requested.

Mr. Laux said the garage addition would encroach upon the rear setback by 3.5 feet. He said there was a sketch on the back of the plat describing the encroachment, which was a corner of the proposed garage. He said this was the only place on the lot where the addition could be placed.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 97-V-131 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM J. LAUX, III AND JOAN MARIE LAUX, VC 97-V-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line. Located at 1802 Stratford Dr. on approx. 12,804 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2))(6) 21. 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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony before the Board of Zoning Appeal to permit construction of addition 21.5 feet from the rear lot line where a requirement of 25 feet is required.
3. The applicant has complied with the prescribed criteria for the granting of a variance.
4. The shape of the lot is irregular and this is a minimal variance with a very minor projection into the rear yard.
5. The applicant has designed the garage to maintain the required setback for the side yard.

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

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

- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated November 26, 1997 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. Ribble seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 346, March 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. JOHN G. HERSH, VC 98-D-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 15.0 ft. from side lot line. Located at 851 Canal Dr. on approx. 42,395 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-2 ((5)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. John G. Hersh, 851 Canal Drive, McLean, Virginia, said it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit an accessory structure, a garage, to be located 15 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 District; therefore, a variance of 5 feet was being requested.

Mr. Hersh said his intention was to build a garage on the north side of the lot and this presented a problem because there was an extraordinary situation with a storm drain easement coming off the road. He said he was the only one suffering with this problem. Mr. Hersh said one solution would be to place the garage 15 feet over, next to the easement.

Mr. Hersh said when he purchased the property, it was his intent to put in a garage but did not realize there would be a problem to this extent. He said there was a septic field on the other side of the house and the only access he had was off the front of the lot. Mr. Hersh said all the homes in the subdivision have multi-car garages. He said one of his family members was in need of a garage, especially in the winter when his wife needed to respond to emergency situations. He said he hired an architect who designed a garage that would be coordinated with the house.

Mr. Ribble wanted to know if this was the only location where the structure could be placed. Mr. Hersh replied saying it was.

Mr. Hersh stated there was a back drop off the rear of the house that was very steep. He said this was where the garage would be placed since it had already been graded. Mr. Hersh said the other side of the house was where the septic field and septic tank was located.

There were no speakers in support or opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-D-003 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN G. HERSH, VC 98-D-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 15.0 ft. from side lot line. Located at 851 Canal Dr. on approx. 42,395 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-2 ((5)) 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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is owner of the land.
2. The applicant has met the nine standards required for a variance.
3. In particular, there is an extraordinary situation which exists in so far as the storm drainage easement on one side of his house and on the other side he has a septic tank and septic field.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage) shown on the plat prepared by W. William Hutchins, Architect, dated August 8, 1997, submitted with this application and is not transferable to other land. The breeze way shown on the plat may be deleted at the applicant's discretion.
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. Kelley and Mr. Hammack seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. EDWARD SANDERS PARTEE, VC 98-V-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 2.0 ft. from side lot line and addition 14.76 ft. from rear lot line. Located at 2003 Glen Dr. on approx. 12,073 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(9) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Sanders Partee, 2003 Glen Drive, Alexandria, Virginia, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit the construction of two decks to be located 2 feet from a side lot line and a two-story addition with basement 14.76 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, a variance of 8 feet was being requested for the decks. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, an initial variance of 10.24 feet was being requested. On March 9, 1998, staff received a revised variance plat which showed a proposed two-story addition with basement to be located 17.7 feet from the rear lot line rather than the 14.76 feet previously proposed.

Mr. Partee said he had spent two years trying to determine how he could effectively build the addition. He said he was before the Board because of the hardship caused by the lot configuration which was a pie-shaped lot. He said the lot had a severe slope on three sides, along the north, south, and east sections of the lot. He said the home was built in 1935, before there were zoning ordinances. Mr. Partee said the variance on the side lot line was unusual in that there was no bordering neighbor on that side, but there was a 20-foot paper street that was dedicated in 1927.

Mr. Partee said the side of the lot had large trees that would shade the addition. He said the addition was at an angle and he was requesting a variance for only a small portion on that side. Mr. Partee stated that as far as the back yard goes, without the unusual shape of the rear lot line, he would not need a variance. He said the revised plat showed the house to be wider in the back, but this was marked basement only which would be below grade and not visible above ground.

Mr. Ribble asked staff to clarify what was meant by a paper street and how far it went. Staff responded by saying that it was a dedicated alley and did not count as a front yard setback and it only existed on paper. Staff also said there was a slope that was heavily vegetated. Staff stated that the street connected between Glen Drive and the cul-de-sac to the rear of the property which was on Fort Drive.

Mr. Ribble commented that the applicant and others could get the property vacated and end up with that property and staff responded by saying that it was possible to do so.

Chairman DiGiulian stated there was one letter in opposition from Ronald Ziegler.

Mr. Partee said Mr. Ziegler, Frances Boyd, and Charlie Maco's property were directly behind his house and they were working together to figure out what was the best option. He said it was his understanding that Mr. Zeigler was speaking for the group of neighbors and they had looked at the application and decided that this was the best option for everyone involved. He said part of the agreement was that the 7-foot high fence in the rear of the property would be extended further and that was perhaps the view that Mr. Zeigler had.

There were no speakers in support or opposition and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 98-V-001 for the reasons stated in the Resolution.

Mr. Kelley commented on the private agreement between the applicant and some of his neighbors. He said he did not agree with Section 5 of the agreement with neighbors agreeing to swap support for variances if they needed to make future improvements to their yards. Section 5 of the agreement also applied to heirs and successors. Mr. Kelley said he did not believe that was valid.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD SANDERS PARTEE, VC 98-V-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 2.0 ft. from side lot line and addition 14.76 ft. from rear lot line. Located at 2003 Glen Dr. on approx. 12,073 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(9) 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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant does meet the required standards, and in this case in particular, there is an exceptional topographic condition with three or four sides having very severe slopes.
3. This is a pie-shaped lot.

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

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

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

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

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

limitations:

1. This variance is approved for the location of decks 2.0 feet from the side lot line with modifications of an addition 17.7 feet from the rear lot line shown on the plat dated March 9, 1998, 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 decks and 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SAID M. KHALEFA AND JAMILA AWAYES, SP 97-L-061 Appl. under Sect(s). 3-403 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit awning to remain 4.1 ft. from side lot line. Located at 6115 Backlick Rd. on approx. 10,970 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((3))(1) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and correct. Said M. Khalefa, 6115 Backlick Road, Springfield, Virginia, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit to allow continuation and expansion of an existing home professional office that had previously been determined to be a legal nonconforming use for one dental practice. The home professional office was now a dental practice for one full-time and one part-time dentist with two part-time dental assistants. The applicant also requested a special permit for an error in building location to allow an existing awning to remain 4.1 feet from the side lot line. In staff's evaluation, all land use and transportation issues had been addressed with the adoption of the development conditions that were included in the staff report. Staff noted that shortly after publication of the staff report, a letter was submitted requesting a third dental chair be permitted in the office, stating that the previous dental practice contained three chairs. Staff was concerned that a third chair would result in more than four patients being treated on the site at any one time which could result in more parking than could be accommodated on the site. Staff recommended approval subject to the development conditions contained in the staff report and recommended that no revisions be made to the maximum number of patients permitted on site at any one time.

Mr. Dively asked staff if the initial request was dealt with, would the intensity be the same under the special permit as under the nonconforming use. Staff said the intensity had been determined to be increased by the Zoning Administrator by the addition of the part-time pediatric dental practice because previously one dentist occupied the home and operated the practice. Mr. Dively rephrased his question by asking if the intensity would change in accordance with the number of patients treated, the traffic, and the parking. Staff said it would be difficult to determine the number of patients that were previously seen under the old dentist since

the property had been changed to a new dentist. Staff also said there was a potential for more patients to be seen. Staff further stated that the pediatric dentist was part-time so that they were only in operation on Saturdays and Thursdays and the parking area was the same.

Mr. Khalefa said the previous dentist, who had a part-time associate, two full-time dental assistants, and a hygienist, probably did not know that the dentist had to live on the premises. He said his staff was less, the number of patients were the same, and the traffic had not increased. He said he and his wife Jamila Awayes, who was a part-time pediatric dentist, have three children. Mr. Khalefa also said his wife worked while their children were at home so that she could check on them. Ms. Awayes said she did not want to lose her years of education by not practicing her skills and her practice was only part-time because it allows her to continue to be a full-time mother. She said she was only working part-time until her children are of school age. She said the patients she sees are children and they would probably only use one vehicle as a family.

Mr. Khalefa said they only schedule families based on the number of spaces available. He said while his wife sees the children he sees the parents and this reduced crowding in the waiting area.

Mr. Kelley wanted to know if Mr. Khalefa would continue to have a hygienist and Mr. Khalefa said he did not have one.

Mr. Hammack wanted to know if the applicant read the proposed development conditions. Mr. Khalefa said he read them but he did not understand everything. Mr. Hammack asked if he agreed with the proposed development conditions or if there was anything he disagreed with.

Mr. Khalefa said with the exception of staff's recommendation for two chairs, he said there were always three chairs in the office until last year when the third chair collapsed and he was advised by the manufacturer that it would be safer to get rid of it. He said he intended to replace the chair to attain the number that was previously allowed. Mr. Khalefa said the third chair would not add traffic since it would only be used for emergencies, in cases where the other two chairs occupied. It would perhaps be used to enable the dentist to take X-Rays and make a determination as to the seriousness of the patient's problem.

Chairman DiGiulian said he did not see anything in the development conditions that precluded having the third chair.

Mr. Hammack said the development conditions dealt with the number of patients on site at any one time and employees on site at any one time.

Staff responded by saying that there was no development condition that required the two chairs. Staff said the limitation was the number of patients that can be on site at any one time. It was staff's concern that if there are three chairs, then there could be three patients and two waiting in the lobby and that would be more parking spaces than could be accommodated in the front. It was staff's recommendation that the development conditions be adopted with the limitation on four patients at any one time. Therefore, if there was an emergency that occupied the third chair, the person in the lobby could not be accommodated.

Mr. Dively asked the applicant if he wanted to change Condition #7 regarding the number of patients at any one time, or was he satisfied with it. Mr. Khalefa said when patients arrive in the office, they were quickly taken into the treatment room, treatment was done, and they leave. He said even though, theoretically, there could be two patients occupying the chairs and two waiting in the waiting room, this was not likely to happen unless the other patient arrived early.

Mr. Dively asked the applicant what had been the practice over the years and what had been the maximum number of patients at any one time. Mr. Khalefa responded by saying two. Mr. Dively asked if he meant two that the applicant had been treating and two waiting. Mr. Dively asked the applicant if it would be a problem to restrict the maximum number of patients permitted on site at any one time to four. Mr. Khalefa said he did not have a problem with it.

Mr. Kelley asked staff if there was a family which included a husband, wife, and three children, would one

have to sit in the car. He asked how does staff count the family members. Staff said the patients were counted as they represent trips or cars in the parking lot. For example, if both dentist were practicing on one family, this could represent one to two cars in the parking lot. Staff said this could be a worse case scenario where as there are the three dentist chairs and an emergency patient arrived, who are not related to the other two patients, that could impact the parking in the front. Staff said each chair would represent one car in the parking lot plus the two who might be waiting to occupy that chair.

There were no speakers in support.

Barbara Byron, Chief, Zoning Evaluation Division, clarified staff's earlier statement. She said the development conditions now stated that the maximum number of patients permitted, which should be interpreted as "people". She said the Board might want to modify that statement to mean "patients vehicles," if the Board was concerned about the families coming together. Chairman DiGiulian agreed with Ms. Byron's clarification.

Chairman DiGiulian called for speakers in opposition.

Alex Squadrini, 702 Flak Street, Springfield, said he owned the house next to the applicant. He said since the applicant purchased the house there had been an increase in traffic and parking problems. He said on any particular day, there were 20 or more people per hour going in and out of the dental office. He said the building has been altered and additional construction had been made in the rear of the house which included, a cement wall that had been placed on the side of the building, and a large awning had also been added. He said he believed when the property was sold, it was grandfathered to remain as it was. Mr. Squadrini said the building had been changed to a commercial enterprise and it appeared that the applicant does not live in the house as stated. He said having this practice in a residential neighborhood had been a detriment to the adjoining properties.

Robert Westmoreland, 6111 Backlick Road, said he had lived at this residence for 42 years. He said there were lots of vehicles coming and going on the premises and lots of people ganging around.

Mr. Kelley wanted to know what Mr. Westmoreland meant by "ganging around" and Mr. Westmoreland said sometimes there would be five or six people ganging around waiting for the other to come out of the dentist office. Mr. Kelley asked Mr. Westmoreland if the ganging around was outside and Mr. Westmoreland said it was.

Mr. Hammack wanted to know if Mr. Westmoreland had observed problems with parking off the site and Mr. Westmoreland said yes. Mr. Hammack asked Mr. Westmoreland where the patients park that do not park on site and Mr. Westmoreland said the patients park in front of his house. Mr. Hammack asked how often the parking in front of his house occurred. Mr. Westmoreland said it occurred daily and one of the dental assistants parked in front of his house constantly. Mr. Hammack asked Mr. Westmoreland to quantify the number of cars that were parked in front of his house on a daily basis or go beyond what he said previously. Mr. Westmoreland said there were wrecked cars and cars that were being tinted. Mr. Westmoreland said Backlick Road had become horrendous and had three lanes going northbound. Mr. Hammack asked Mr. Westmoreland how did he know that the cars parked in front of his house belonged to patients who were going to the dentist. Mr. Westmoreland said he saw people going in and out of the dental office. Mr. Hammack asked Mr. Westmoreland what about the wrecks he mentioned previously and did the wrecks belong to a patient or were they just stalled cars. Mr. Westmoreland said he did not know whether or not they were from the dental office or not.

In rebuttal, Mr. Khalefa said he was disappointed that the neighbors had not expressed their wishes for him to change his dental practice. He said his patients did not park on the street. Mr. Khalefa stated that Mr. Westmoreland expressed his wish to have his neighbors removed from their residence because as Mr. Westmoreland claimed, there were 20 or 30 cars that were parked there at any one time. Mr. Khalefa said there was no fence between his and the neighbor's property so they sometimes parked on Mr. Khalefa's property. He also said with respect to the alleged increase in patients, his office manager, Kathy Harris, was also the office manager for the previous dentist and she could attest to whether the number of patients had

been increased.

Ms. Awayes stated that Mr. Squandrini did not live in the house next to theirs so he could not say they do not live there. She said with respect to the wrecks and people ganging around, the house next to theirs was being rented by the family living there. Ms. Awayes said it was her belief that the neighbors next door fixed cars and the cars should not be confused to be those of her patients. She said her patients were from toddlers up to teenagers 15 years of age. Ms. Awayes said there were never 20 cars at their practice at any one time. She also said the request to replace the awning was to replace the old one that was falling down and if it was moved up higher, it would cover the fire escape outside her children's bedroom.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to adopt the special permit resolution and approve the application subject to the development conditions contained in Appendix 1 of the staff report dated March 3, 1998. He said the testimony was clear that this had been a use of quite a long standing, also the awning had been there for a very long time. Mr. Dively said he was not convinced that there was an increase in traffic or parking and that in the event this was true, the special permit dealt with that. He also said the conditions must be complied with.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SAID M. KHALEFA AND JAMILA AWAYES, SP 97-L-061 Appl. under Sect(s). 3-403 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit awning to remain 4.1 ft. from side lot line. Located at 6115 Backlick Rd. on approx. 10,970 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((3))(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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is the owner of the land.
2. The testimony makes clear that this has been a use of quite long standing.
3. The awning has been there for a very long time and the testimony which was uncontroverted stated that it was replaced because after 20 years of wear and tear, and it was in disrepair.
4. The special permit conditions deal with parking and traffic issues.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6115 Backlick Road, 10,970 square feet, and is not transferable to other land.

Page 355 March 10, 1998, (Tape 1), SAID M. KHALEFA AND JAMILA AWAYES, SP 97-L-061, continued from Page (354)

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A. Logan dated October 24, 1997, as revised through February 3, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

The maximum amount of square feet devoted to the home professional office shall not exceed 1,000 square feet.

6. The maximum number of employees shall not exceed four (4), including the applicants.
7. The maximum number of patients permitted on-site at any one time shall be four (4).
8. The hours of operation shall be limited to Monday through Saturday 8:00 a.m. to 5:30 p.m. for general dentistry, and two days a week 9:00 a.m. to 3:30 p.m., and Saturday noon to 5:00 p.m. for pediatric dentistry.
9. Eight (8) parking spaces shall be provided on-site as shown on the special permit plat. The southernmost angled parking space and the 3 parallel parking spaces shall be reserved for employees only.
10. All signage shall comply with the provisions of Article 12, Signs, of the Zoning Ordinance.

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 355 March 10, 1998 (Tape 1), Scheduled case of:

9:00 A.M. CHANTILLY AMUSEMENTS L.L.C., SP 97-Y-028 Appl. Under Sect (s) . 5-503 of the Zoning Ordinance to permit commercial recreation park. Located at the terminus of Brookfield Corporate Dr. on approx. 6.27 ac. Of land zoned I-5. Sully District. Tax Map 44-1 ((6))3B. (In association with PCA 79-S-113 and RZ 1997-SU-030). (moved from 11/25/97 and 2/24/98)

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 Thomas, Jr., Fagelson Schonberger Payne & Deichmeister, P.C. 11320 Random Hills Road, Fairfax, Virginia, said that it was.

Susan Johnson, Staff Coordinator, Special Exception and Rezoning Division, gave staff's presentation as outlined in the staff report. The applicant was requesting a special permit approval for a commercial recreation park. The park would include a water park facility, go-kart facility, and a roller rink facility. Staff noted that there was a revised generalized development plan plus special permit plat that included enlargement of the roller rink building and a corresponding decrease in the size of the water park and go-kart track that was submitted after publication of the staff report. The proposed changes did not alter the proposed plan and did not affect staff's recommendation of approval.

Mr. Thomas said this project had overwhelming support from The Western Fairfax Civic Association and the other surrounding communities. He said the project was originally submitted in June 1997, with the expectation that it would be expedited. Mr. Thomas stated that the applicant would install traffic signals before the water park was opened. The applicant would put up \$33,000 of what was projected to be about \$100,000 in total costs. In addition, one of the major issues was in the Dulles Corridor Guidelines of the Comprehensive Plan which called for substantial buffering. The earlier submissions had 20-foot wide buffers off Route 28 and through the iteration of the plans, the applicant came back with a 50-foot wide buffer which was not insignificant in that while it buffers the water park from Route 28, had some impact on what could be done with other areas.

Mr. Thomas said when changes were made to the special permit plat, uses were moved around and changes were made that reflected the comments from staff. He said since the Sierra Suites Hotel complained that the go-kart facility was too close to their property, the go-kart facility was placed between the roller rink and the water park.

Mr. Thomas requested that Conditions #6 and #7 be removed, specifically, Condition #6, which was a request for a masonry wall. Also, that Conditions #8, #10, and #11 also be removed. He said Condition #6 was a request for a masonry wall which he believed was unnecessary. Condition #8 sought to plant larger trees on Route 28, which was right behind the building. Condition #10 showed parking island landscaping along the northern portion of property. Mr. Thomas said enhanced tree scape along the northern portion of the use was planned for more trees, but if more parking spaces are taken, it would be a detriment to the overall park.

Mr. DiGiulian asked if the plan met the interior parking requirements under the Ordinance and Mr. Thomas said it did and that the condition was to allow additional parking spaces to be added.

Mr. Thomas said Parcels 3A-1 and 3A-2 were two hotel uses to the north. Parcel 3B belonged to the applicant and Parcel 4 to the south had a stormwater pond already built and would be used by the applicant. He said the language in Condition #11 was unnecessary but was permissive since he was not sure what upgrading to present Public Facilities Manual (PFM) standards meant beyond making sure than an existing stormwater pond met PFM standards. He asked that this language be omitted.

Mr. Pammel said he had problems with the staff report because it stated that the application conforms to the Comprehensive Plan, yet on Page 3 of the staff report, it referred to "Land Unit E-3". Mr. Pammel said he did not see the compatibility of this use with what was set forth as those uses that were recommended in the Comprehensive Plan.

Mr. Thomas said this issue came up with the hotels. He said what was presented to the Comprehensive Planning Division was the flexible aspect of the Dulles Corridor plan. This plan stated that if there was a superior development that generated less traffic and met the design guidelines of the Corridor, the industrial flex office envelope could be expanded. Mr. Thomas said the Corridor plan also made reference to enhancing recreational activities which are unlikely to be located in other areas of the County.

Mr. Hammack asked if any one was having problems with the effects of the go-kart tracks. Mr. Thomas said he knew what the decible level of the go-karts was. He said studies on the older models of the go-karts at shorter property lines had a decible level below 65, which equates to a moderate conversation tone. He said if the go-kart tracks were moved close to the southern property line, and if a building was placed between them and a water park placed above that, the noise would not be heard. Mr. Thomas said the overhead noise from aircrafts and the traffic from Route 28 generated noise over 65 decibles, which was more noise

Page ³⁵⁷ March 10, 1998, (Tape 1), CHANTILLY AMUSEMENTS L.L.C., SP 97-Y-028, continued from
Page (356)

than the go-kart tracks. He said there is a condition in the proffer which stated the applicant would adhere to or exceed the County's standards for noise.

Chairman DiGiulian asked staff to respond to the deletion of the five conditions. Ms. Johnson said the Route 28 Corridor is a high-quality design area and the conditions were put in place to help assure this design met the Route 28 design guidelines.

Chairman DiGiulian asked if the conditions exceeded the Ordinance and if staff imposed these conditions on any other developments in the area and which ones.

Ms. Johnson said it did and that these conditions had been imposed on the two hotels that were asking for additional screening. Chairman DiGiulian asked if the hotels had masonry walls and Ms. Johnson said she did not believe they did.

Mr. Kelley said he would like a detailed list of each one of the proposed conditions to be deleted.

Ms. Johnson said Condition #6, which was the 6-foot high masonry wall, would divide the subject property and the two hotels to the north. She said the hotels asked for a wider buffer and staff felt that the imposition of a six-foot wall might help to attenuate some of the noise and provide a buffer between those uses.

Chairman DiGiulian asked if the hotel was new and if they provided the same width buffer that the applicant was proposing.

Barbara A. Byron, Chief, Zoning Evaluation Division, said when the hotel came in, the adjacent property was planned and zoned for industrial use. She said it was staff's view that in order to make this use compatible with a hotel use, providing screening between the waterpark and the hotels would be a better solution.

Chairman DiGiulian asked how many stories did the hotels have and Ms. Byron said she was not sure if the stories were higher than it would look over the wall. Chairman DiGiulian said he was concerned that the hotel was asking for more screening. Ms. Byron said staff had asked for more screening to address a compatibility issue.

Mr. Kelley wanted to know which hotel asked for more screening, since the Sierra Suites was being built and was not yet occupied. Ms. Johnson said Homestead Village also submitted a letter.

Mr. Hammack asked if part of the screening issue was related to the potential noise issue. Mr. Hammack stated he did not understand how an amusement park use fits into a campus-style office park in an industrial flex development because it did not appear to be a part of the Comprehensive Plan and not with go-karts.

Ms. Byron said it was an issue that staff wrestled with and that the Comprehensive Plan called for base line use of high-quality campus-style office. She said the plan permits optional uses if it could be demonstrated that they met the level of expected quality. Ms. Byron said staff felt comfortable with the proffers and development conditions and considered them to be sufficient to render this high quality development. Staff concluded that it was compatible with the optional uses permitted under the Comprehensive Plan.

Mr. Hammack said he was concerned about the noise issue and he would like to know more about it. He said the proposal to operate go-karts from 10:00 a.m. to 11:00 p.m., seven days per week, 365 days per year was a high level of noise.

Ms. Johnson read the additional four conditions. She said in addition to the 6-foot masonry wall on the north side, a 6-foot board-on-board fence was proposed along the southern side. The property had not yet been developed but was proposed for an office industrial type use and staff had asked for a buffer for the uses, noise, and visual impact. The applicant asked for Condition #8 to be deleted. This was to replace the small evergreens with large evergreens between the roller rink and Route 28. She said the landscaping being proposed were trees and small evergreens, which staff felt did not meet the criteria of a visual buffer between these uses. Staff asked for replacement of small evergreens with tall evergreens to supplement

this buffer.

Regarding Condition #10, the applicant asked for Provisions of a high-quality design and additional landscape island located every 10 to 12 parking spaces and planted with shade trees. Some of these shade trees had been provided and they met the interior parking lot standards. Additional measures need to be imposed to bring this to high-quality design standards. Regarding Condition #11, the applicant asked that previous contractors on the property had off-site storm water management agreement to use the facility on Lot 4. If they need to upgrade to Public Facilities Manual (PFM) standards, Department of Environmental Management (now the Department of Public Works and Environmental Management) would take a look at this.

Chairman DiGiulian asked if the conditions were included in the Board of Supervisors package. Ms. Byron said most of the operational characteristics were left to the special permit conditions and the basic uses of the land were put in the proffer condition amendment and the zoning proffers. She said the supervisory district in which this is located was aware of this and treated it as a package.

Mr. Thomas said Sierra Suites was concerned about the go-kart track facility because the track was originally shown next to the hotels. He said the go-kart tracks were moved to the south end of the site. Mr. Thomas said if a decibel meter was to be placed at the site now, the ambient noise would be louder than what would be generated from the water park. He said the go-kart tracks had been moved away from the hotel, and a parking lot and buffering had been placed between the site and the hotels, in addition to the landscaping that had been added.

Mr. Thomas said the hotel had I-5 property south of them and had a minimum buffer of 10 feet to the parking lot which was approved to the applicant's site. He said restrictions were placed on the use of the property which stated that other uses were permitted by right and were not industrial flex or office uses, but because it was I-5 property, other uses that could have come in were lumber yard, heavy manufacturing, storage yard, and junk yard as by-right permitted uses. These uses were next to the hotel and the hotel had no Comprehensive Plan issue with them because it was a permitted use by right.

Mr. Hammack said one of the provisions for bringing in something different was to satisfy all these extra criteria, one of which was "provision for the highest level screening and landscaping of all parking." He said this would be provided for under the land use development plan. He also said he had a problem with the Comprehensive Plan because it talked about dwelling units and retail use for employees, but amusement park operation was not mentioned.

Mr. Thomas said through conversations with staff, each iteration of the plan contained more landscaping was well above the minimum that would be required. He said the main area that was the concentration of the staffing commentary was the Route 28 buffer strip. The requirement of the Comprehensive Plan was that this be substantially landscaped. He said the 30 feet they started with was a very large buffer to an industrial corridor when there was no requirement by the Zoning Ordinance. Mr. Thomas said the applicant would be putting a 50-foot setback buffer with berm and heavy landscaping to the north and landscaping on the interior of the site which exceeded the minimum requirements.

With regard to the Comprehensive Plan, Mr. Thomas said they met with staff and went through the language of the Comprehensive Plan which was satisfied in the staff report. There was a grouping of pad sites and the Capital Expo Center along the Dulles Corridor. The traffic signal the applicant was putting at the corner at Williard Road and Daly Drive would serve two new high-rise hotels, the Capital Expo Center, McDonalds and several other fast food restaurants, the Mobil Oil gas station, several office buildings, and a bank. On the other side were the remains for the Flatlick sewer treatment plant, which was a maintenance facility for the Fairfax County Park Authority. This was home to heavy equipment trucks, cherry pickers, and unplanted landscaping. Mr. Thomas said this was a project that needed to be approved because the applicant had gone to extraordinary limits in order to meet the request for a superior project.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said he felt uncomfortable even though this use was a needed use but there were too many conflicts. He said he was not able to overcome the conflict of what the Comprehensive Plan said. Mr.

Pammel said staff made a liberal interpretation of the language but it was not clear that this was an anticipated use for this area where there was high-quality industrial park, industrial flex office buildings, and supporting commercial use, but not an amusement park. He said he did not believe this use fits into that category. Mr. Pammel said the Comprehensive Plan needed to be more flexible when these issues had to be addressed.

Mr. Pammel said the standards must be met when coming in under the "industrial flex" with a superior development. He said he believed that in the Airport Overlay Noise District, there were exterior ambient noise standards that applied to outdoor uses and if you refer to noise decibels in the 75 range on a consistent basis, as often as the planes come along with the highway noise, a lot of people are subjected to the noise. He said the language in the Plan talked about mitigation measures in terms of building standards, buffering standards, and noise attenuation, but it did not talk about open uses that drew people outside to be further exposed to these noise elements. There were conflicts that had not been resolved. Based on this, Mr. Pammel made a motion to deny this application subject to the conditions of the resolution. Mr. Hammack seconded the motion for the purpose of discussion.

Mr. Hammack said he did not understand how the Comprehensive Plan had been stretched to this point. He said he read the memorandum prepared by Barbara Byron and the points raised therein. Mr. Hammack said he was not moved by the argument that the two hotels being built had less screening than the applicant. He also said part of this application may have some merit or even be acceptable but that he was concerned about the additional noise. Mr. Hammack felt that allowing this use would have an impact on the hotels. He suggested a deferral in order to obtain a report on the noise level.

Mr. Ribble said he would need to visit the site. He made a substitute motion to continue the application for two weeks to March 24, 1998, at 9:00 a.m., in order to obtain a report of the noise study. Mr. Kelley seconded the motion.

Mr. Pammel also supported the motion for continuance for two weeks. He asked that staff address the issues raised with respect to exterior ambient noise and how this played a role.

The motion to continue carried by a vote 5-0. Mr. Dively was not present for the vote.

The Board recessed at 11:00 a.m. and reconvened at 11:11 a.m.

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9:00 A.M. ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and child care center. Located on Sugarland Rd. at the Fairfax/Loudoun County Line on approx. 2.27 ac. of land zoned R-1. Dranesville District. Tax Map 5-4((1))3, 4 pt. (place of worship)(Moved from 12/10/97, 2/25/97, 3/18/97, 6/17/97, 7/15/97, 9/23/97, and 11/18/97) (Moved from 12/10/97, 2/25/97, 3/18/97, 6/17/97, 7/15/97, 9/23/97, 11/18/97, and def. from 1/20/98 and 2/17/98)

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, Randy Minchew, Hazel & Thomas, 44084 Riverside Parkway, Leesburg, Virginia, said it was.

Barbara Byron Director, Zoning Evaluation Division, gave staff's presentation as outlined in the staff report. The applicant proposed to construct a facility of approximately 58,800 square feet in three phases. Phase 1 would be 25,509 square feet of community hall with weekend school. Phase 2 would be 12,600 square feet which included a childcare center. Phase 3 was 20,690 square feet which included the prayer hall. The applicant was requesting approval to permit 900 attendees on site at any one time which included a maximum of 300 people within a weekend school, and 75 children within the childcare center. Condition # 6 was

redrafted to clarify that 900 was the maximum number of people on site at any one time. No more than 750 people can be on site at any one time during Phase 1. A minimum of 140 parking spaces was to be provided in Fairfax County and an overall total of 370 were to be provided. All parking would be on site and the applicant would take all measures to ensure that this occurs. A sketch was submitted which showed how the Starkey property would be developed, the continuation of the buffer along Sugarland Road, and 166 parking spaces to bring the total number of parking spaces to 547, which would be 1.8 attendees per every parking space. Staff recommended approval of the application subject to the revised development conditions dated March 9, 1998.

Mr. Minchew said the last public hearing never commenced. He said there was a pre-public hearing discourse. He said the application was first filed in 1994 and had been through the Loudoun County process, including the Planning Commission, and the Board of Supervisors, and before the Planning Commission in Fairfax County.

Mr. Minchew said the application was in conformance with the Comprehensive Plan. He said since the last presentation before the BZA, the applicant had purchased the 5 acre Starkey property and discovered that the division of that property could be done without compliance with the Fairfax County Zoning Ordinance. The property would be kept as privately held park land until it was needed for parking. The application had been approved by Loudoun County Planning Commission and Board of Supervisors.

Mr. Pammel asked if there was a connection with the Virginia Department of Transportation's (VDOT) project on Centreville Road and the acquisition of the Starkey property, and the improvements along the frontage of the property. Mr. Minchew said that it was.

Mr. Kelley asked Mr. Minchew if it was his belief that in order to bring the Starkey property under the special permit he would have to go through the Loudoun County process and Mr. Minchew said yes. Mr. Minchew read the Development Conditions from Loudoun County which stated that all parking activities associated with all ADAMS related uses conducted on the subject property shall be maintained on the site, defined as the six acres north of the Muddy Branch flood plain. Mr. Minchew said if the Starkey property was brought in, it would be beyond the six acres, and in order to have strict conformance with these conditions, an amendment to the Loudoun County Special Exception would be required.

Chairman DiGiulian called for speakers in support of the application:

Wael Alkhalero, 1684 Bayfield Way, Reston, stated that he was a member of the ADAMS elected board of trustees. He said the Muslim community had been provided with various services by the old ADAMS through rental spaces since 1992. ADAMS has established a permanent center and place of worship. Mr. Alkhalero said ADAMS provides religious education and social services to the Muslim society. He said the mission statement stated that service to humanity was as important as devotion to God. He said ADAMS had met and exceeded all the requirements set by Fairfax County and Loudoun County.

Bill Marr, attorney representing the ADAMS task force which was made up of surrounding communities, said the surrounding communities had several concerns which include the size of the proposed facility, the intensity of the use, parking, traffic, buffering, and landscaping, as well as, several environmental issues, including run-off, surface permeability and tree preservation. He said he believed these concerns had been met and looked forward to a productive relationship with the ADAMS community.

The following people spoke in opposition to the application:

William Frey, 107 Norwood Place, said the plan had changed significantly since it last went before Loudoun County. He said the bulk of the construction was closest to the Norwood community which only had a 30-foot buffer. Mr. Frey said the 40-foot buffer that was before the Board was only in Fairfax and not along the frontage in Loudoun. He said he would like to see a 40-foot buffering all around.

Mr. Frey said he was concerned with the number of vehicle trips that will be generated with this application. He was also concerned with parking issues. Mr. Frey said he had concerns with Condition #29 and

Sugarland Road. He said he would like to see completion of the Starkey property prior to occupancy of Phase 1 instead of Phase 3 and Sugarland Road completed to two lanes on their side.

John Kennis, President of the Norwood Home Owners Association, said neighbors on both side of Loudoun and Fairfax County were concerned about who would enforce the stated Development Conditions. He said he had been told that failure to comply with Fairfax County's Development Conditions could lead to revocation of the occupancy permit. He said this was also a problem with Loudoun County.

Mr. Kennis said one of the Loudoun County Supervisors told him that they would shut down ADAMS if off-site parking took place. He said if the Board approved the application, then the Development Conditions must be followed because there would be problems if it was not. He said he would like to see the application resubmitted to both Counties because the lot was originally a 6-acre lot but now was an 11-acre lot. He urged the Board to take a long look at the enforcement mechanism and to send the application back to Loudoun County for review.

Mr. Minchew, in his rebuttal, clarified a statement made by William Frey which talked about the gap in the frontage of the Starkey property. Mr. Minchew said the work on Sugarland would be done at Phase 2 and not Phase 3. He said Loudoun County approved the application on a unanimous vote without the Starkey property being on board. Mr. Minchew said it was his belief that if the application was taken back to Loudoun County, it would take another year before the worshipers could have a place to call home. He said he opposed bringing in the Starkey property.

Mr. Pammel clarified a statement he made when he referred to the road as "Centreville Road," he said he meant to say Dranesville Road.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve SP 96-D-038 with modification to the Development Conditions outlined in the Resolution. He said he was impressed with the way the applicant had worked with the various jurisdiction in order to bring this application into compliance with all of the zoning requirements. Mr. Hammack said this was an unusual application for this Board because the bulk of the building was in Loudoun County, although much of the impact from the traffic would effect Fairfax County. He said he felt that the 5-acre track of the Starkey property was an intricate part of approving the application. He said the Board had generally required more land in order to accommodate the parking.

Mr. Hammack said it appeared that the Ordinance did not really addressed the number of vehicles or trip generation by active houses of worship. He said this had been his main concern in supporting this application. Mr. Hammack made a change to the Development Conditions that would require the applicant to return to Loudoun County and then return to the BZA for incorporation of the 5-acre Starkey property into the special use permit.

Mr. Pammel seconded the motion. Mr. Pammel made it clear that the 45 day provisions only addressed the application being filed to increase the land area and nothing else. He said this was to incorporate the Starkey track into the special permit, the special exception, proffer condition amendment, and the Loudoun County special exception.

There was a discussion among staff and Board members concerning additional parking and the 45-day filing time. Staff said the statement should be clarified that the applicant should file the application and diligently pursue within 45 days to avoid confusion.

Mr. Hammack said he would require the applicant to bring the 5 acres into the special permit but without committing them to construct the parking immediately. He said it should be deferred until such time until after the completion of Phase 1, if the demand for parking exceeds that which was on site and the Office of Transportation or the Zoning Administrator would require the construction of this additional parking on the Starkey property.

Mr. Minchew said even though he agreed with Mr. Hammack's explanation of the language of the 45-day filing time, the applicant would not support that language because they would be going into site plan and architectural design.

Mr. Hammack said the Board has had problems with other facilities with off-site parking.

Mr. Kelley said Condition #29 had an ambiguity and would need to be reworded. He said the Board would look at it at the next meeting.

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**REVISED
COUNTY OF FAIRFAX, VIRGINIA**

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and child care center. Located on Sugarland Rd. at the Fairfax/Loudoun County Line on approx. 2.26 ac. of land zoned R-1. Dranesville District. Tax Map 5-4((1))3, 4 pt. (Moved from 12/10/97, 2/25/97, 3/18/97, 6/17/97, 7/15/97, 9/23/97, and 11/18/97, and def. from 1/20/98 and 2/17/98). 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 bylaws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 1998; and

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

1. The applicant is the owner of the land.
2. The Board is impressed with the way ADAMS worked with various jurisdictions in order to bring this application into compliance with all of the zoning requirements.
3. It is an unusual application for this Board because the bulk of the building is in Loudoun County, although much of the impact from the traffic is going to impact on Fairfax County.
4. The 5 acre Starkey track is an integral part of approving this application.
5. In approving religious houses of worship of comparable size, this Board has generally, for various reasons, required more land in order to accommodate the parking.
6. It seems that the Ordinance does not really address the number of vehicle trips that are generated by active houses of worship.
7. The existing 6 acre parcel is tight and the Board is being asked to approve this application technically on that basis, but we have been presented with the Starkey property as available for expansion .
8. The 5 acre parcel is important because it will accommodate parking and also in order to satisfy some of the other conditions that are contained in the various 30 developments conditions the Board is being asked to impose in Fairfax County.
9. The Board is obligated to try to show that the applicant has satisfied all of the standards prior to approval of this application.

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

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

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

Page 363, March 10, 1998, (Tape 1), ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SP 96-D-038, continued from Page (362)

1. This approval is granted to the applicant only (Adams Center) 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 Professional Design Group, Inc., with Sheet One, revised through February 5, 1998, Sheets Two and Three revised through February 23, 1998, the architectural renderings dated April 10, 1997, the landscape planting detail dated September 4, 1997 and sections dated September 4, 1997, 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. All site plans submitted to Loudoun County shall be submitted concurrently to Fairfax County for informational purposes.
6. This approval is valid only for the same or the less intense use as described in the applicant's Statement of Justification, dated June 21, 1996, and updated October 1, 1997, and February 6, 1998 (maximum 900 attendees at any one time; the 900 persons includes those attending the place of worship and the children in weekend school and/or the child care center). The maximum number of children in the weekend school shall be 300 and the maximum number of children in the child care center shall be 75. The hours of operation of the weekend school shall be limited to weekends between 10:00 a.m. and 4:30 p.m. and the hours of operation of the child care center shall be limited to 6:30 a.m. to 6:30 p.m.
7. During Phase I (not to exceed 25,509 square feet of the religious facility building), no more than 750 persons may occupy the building or participate in any activities on-site at any given time.
8. There shall be a minimum of one hundred and forty (140) parking spaces provided on the portion of the site located in Fairfax County; provided, that in order to accommodate the landscaping and screening required by Development Conditions No. 11, 12 and 13, a fewer number of parking spaces may be provided in Fairfax County, so long as the combined total number of parking spaces is at least 375. All parking for this use shall be on site. The location of the parking spaces may also be modified to provide the landscaping and screening required by Development Conditions No. 11, 12 and 13.
9. Fulfillment of the requirement that all parking shall be on-site shall be a prerequisite to the right to maintain and to continue the use and occupancy of the subject property pursuant to SP 96-D-038. Failure of the applicant, its agents or invitees to conform strictly to this condition shall be grounds for the commencement of immediate Fairfax County Zoning Enforcement actions and/or for revocation of the special permit by the Board of Zoning Appeals (BZA).

In furtherance of ensuring strict conformance with this development condition, the applicant

- A. A comprehensive education program shall be instituted to educate all members and attendees of Adams Center events of these development conditions, including the prohibition against off-site parking and to encourage car pooling and other high occupancy use of vehicles by all attendees of events conducted on the subject property. This education program shall begin immediately upon approval of SP 96-D-038 with members at the current Adams facility in Herndon, shall continue at the center approved pursuant to this special permit immediately upon issuance of the Non-Rup for Phase I and shall remain in effect thereafter on an on-going basis.
- B. At such time as the Zoning Administrator, after consultation with the Office of Transportation,

in her sole discretion determines that parking management agents are needed to facilitate proper and efficient parking on-site and to prohibit off-site parking, and thereafter, the applicant shall ensure that at all Friday afternoon prayer services and at services occurring on the holidays of Eids a minimum of two (2) parking management agents shall be stationed at the Sugarland Road entrance into the subject property and at critical vehicular movement point(s) within the subject property to direct vehicles to on-site parking areas and to maximize the efficient utilization of parking spaces. The parking management agents shall be equipped with blaze orange vests, lighted signaling devices, two-way radios and/or other materials as may be necessary to direct vehicles to available spaces.

One (1) additional parking management agent shall be stationed at the northwestern corner of the subject property on Sugarland Road, and, as necessary, at other public off-site areas to enforce the requirement that all persons attending events at the subject property park their vehicles on-site. The agent(s) shall maintain written records of notifications and warnings given, inclusive of the names of transgressors of this off-site parking prohibition and the license plate identifications of their vehicles. Such written records shall be made available for inspection by Fairfax County authorities.

C. Upon issuance of the Non-Rup for Phase 1, a "high occupancy vehicle" (HOV) preference program shall be instituted whereby a minimum of forty (40) preferred parking spaces near the entrance to the Adams Center facility shall be dedicated for HOV-only use. For the purpose of this condition, HOV use shall be defined as three (3) or more persons per vehicle. When on duty pursuant to Condition B. above, the parking management agents shall direct high occupancy vehicles to the preferred spaces and shall prohibit single occupancy vehicles from utilizing those spaces.

10. If, after the completion of Phase I, the demand for parking exceeds that which has been provided on site, no permits (clearing and grading, building, or any other permit) shall be issued by Fairfax County for the construction of Phase II or Phase III unless and until it is demonstrated that adequate parking has been provided to accommodate the use as determined by the Fairfax County Office of Transportation. A copy of the traffic study and on-site parking utilization study required by the Loudoun County Board of Supervisors pursuant to the approval of Special Exception Application SPEX 1996-0018 shall be submitted to the Fairfax County Zoning Administrator and Office of Transportation at such time as it is submitted to Loudoun County.

Prior to the submission of a site plan for Phase II construction, but no sooner than one (1) year from the issuance of the Non-Rup for Phase I, a traffic study of then current parking conditions shall be submitted to the Fairfax County Office of Transportation, unless the requirement for such is waived by the Office of Transportation. At such time as the site plan is submitted for Phase III construction, a traffic study of the then current parking conditions shall be submitted to the Fairfax County Office of Transportation, unless the requirement for such is waived by the Office of Transportation.

11. The Transitional Screening requirement on the north shall be modified such that a Transitional Screening area forty (40) feet in width shall be provided along the Sugarland Road property line in Fairfax County. Within this Transitional Screening area, existing quality vegetation shall be preserved to the maximum extent feasible as determined by the Urban Forester; the three (3) foot high berm and four (4) foot high board on board fence on top of the berm shown on the special permit plat shall be provided within the area and additional plantings shall be provided as determined appropriate by the Urban Forester.

Along the eastern boundary of the property, a fifty (50) foot Transitional Screening yard containing Transitional Screening 3 plantings shall be provided unless waived by the Director of DEM at the time of site plan approval for Phase I upon a commitment to preserve at least fifty (50) feet of existing tree vegetation along the western border of the "Starkey" property. Furthermore, pursuant to Condition #29, if the "Starkey" property is incorporated into the special permit property and the special permit amendment is established, this screening shall no longer be required.

The purpose of this screening shall be to soften the visual impact of the proposed place of worship 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. Within these Transitional Screening areas, existing quality vegetation shall be preserved to the maximum extent feasible as determined by the Urban Forester at the time of site plan review.

The barrier requirement along the northern and eastern property lines shall be modified to that shown on the special permit plat and by these development conditions.

12. 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. If necessary, interior and peripheral parking lot islands shall be designed in order to preserve existing vegetation, as determined by the Urban Forestry Branch.
13. 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, provided that the required number of parking spaces are not reduced. If it is determined by the Urban Forestry Branch that trees previously designated to be preserved must be removed 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.
14. Typical tree planting details and specifications addressing proper planting and backfill techniques shall be incorporated into the landscape plan, as reviewed and approved by the County Urban Forestry Branch. As determined by the Urban Forester, a specified area extending beyond tree rootballs shall be rototilled in order to promote faster root expansion of planted trees, provided that the required number of parking spaces are not reduced.
15. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be 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.
16. The Resource Protection Area (RPA) boundaries on the property shall be established in accordance with the criteria established by the Chesapeake Bay Protection Ordinance (CBPO) as determined by DEM. No land disturbing activities shall occur within the RPA.

Prior to site plan approval for Phase I, the applicant shall record a covenant running to the benefit of the Fairfax County Board of Supervisors which shall provide that those portions of Tax Map parcel 5-4((1))4, to the north and south of Muddy Branch which are not included within SP 96-D-038 but which are located within the 100-year floodplain and/or associated RPA, shall remain undisturbed in permanent open space. No structures, including fences, or clearing and grading shall occur within this area. The form of the covenant document utilized shall be subject to approval by the Fairfax County Attorney's office.

17. Stormwater Best Management Practices (BMPs) shall be provided as determined by the Director, DEM at the time of site plan review to meet the requirements of the CBPO. If the underground stormwater management facility shown on the special permit plat is not sufficient to provide BMPs as determined by DEM and additional facility or facilities must be provided, no parking spaces, landscaping, or transitional screening shall be lost to provide such facilities. Any change to location of the stormwater management facilities within the Fairfax County portion of the site that is not in substantial conformance with the Special Permit Plat as determined by OCP shall require the approval of a special permit amendment.
18. Right-of-way to 35 feet of the centerline of Sugarland Road along the site's frontage shall be dedicated to the Board of Supervisors in fee simple along with any ancillary easements which may be necessary to construct a sidewalk and improvements to Sugarland Road at the site.

approval Phase 1 or upon demand by Fairfax County, whichever occurs first. Along the site's frontage, a twenty-six (26) foot cross section from the centerline to the face of curb shall be constructed for public street purposes as required by the Director, DEM and/or the Virginia Department of Transportation (VDOT). A five foot concrete sidewalk shall be constructed within the right-of-way along the entire frontage of the property.

19. Prior to the issuance of a site plan for Phase I, the applicant shall dedicate or cause to be dedicated to the Board of Supervisors in fee simple off-site right-of-way along the Sugarland Road frontage of the "Starkey" property (Tax Map parcel 5-4((1))5A) consisting of 35 feet from the centerline of Sugarland Road, unless otherwise done by others. No site plan shall be issued absent such dedication.

20. Prior to the issuance of a Non-Rup for Phase II, the applicant shall construct a 26-foot cross section of Sugarland Road from the centerline to face-of-curb along the entire frontage of the "Starkey" property (Tax Map parcel 5-4((1))5A) for public street purposes as required by DEM and/or VDOT unless such improvements have already been constructed by others by that time. However, the applicant shall construct the improvement earlier, subsequent to the issuance of a Non-Rup for Phase I but earlier than the issuance of a Non-Rup for Phase II, if, in the opinion of the Office of Transportation, the improvement is warranted earlier as a result of ADAMS Center related traffic.

21. At the time of site plan approval for Phase 1, the applicant shall escrow funds in an amount determined by DEM for the upgrading to a permanent cul-de-sac of the temporary cul-de-sac at the terminus of proposed Landerset Drive Extended, east of the subject property, shown on the Generalized Development Plan for RZ 90-D-058, approved by the Board of Supervisors on June 17, 1991. This escrow shall be returned to the applicant if a proffered condition amendment to RZ 90-D-058 is approved which deletes the requirement for the cul-de-sac at the terminus of proposed Landerset Drive Extended.

22. Any proposed lighting of the parking areas shall be in accordance with the following:
- The combined height of the light standards and "Shoebox" style fixtures shall not exceed twelve (12) feet.
 - Light standards shall be located on the interior of the site and shall not be located along the outside edges of the parking lot adjacent to the northern and eastern property lines.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - The parking lot lights shall be used only in conjunction with the specified early morning and evening prayers and associated activities, and shall be connected to an automatic timing device which shuts off the lights at 10:00 p.m, at which time motion detectors on selected light fixtures may be utilized for security purposes.

23. Any building mounted lights shall focus downward and shall not be lit after 11:00 p.m, at which time motion detectors on selected light fixtures may be utilized for security purposes.

24. No trash dumpster shall be located in Fairfax County.

25. The structure shall be in conformance with the architectural elevations submitted with the special permit plat prepared by James Lee Koleszar, AIA Architect, dated April 10, 1997. The materials shall be primarily synthetic stucco, split-faced block, cast stone or polished block as well as dark bronze glass aluminum frames at the doors and windows, as indicated in the applicant's statement of justification. Structures shall not exceed 39 feet in height, except for the minaret and dome which may be up to 45 feet in height.

26. There shall be no permanent basketball standards located on that portion of the site in Fairfax

County.

- 27. All signs shall be in conformance with Article 12, Signs of the Zoning Ordinance. All illuminated or lighted signs and shall be connected to an automatic timing device which shuts off the lights at 10:00 p.m.
- 28. The applicant shall limit site construction to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 10:00 a.m. and 6:00 p.m. on weekends.
- 29. In order to provide for open space and screening, and for an area of future parking, if such is needed, the applicant shall retain ownership of the 5.0 acre tract known as the "Starkey" property (Tax Map Parcel 5-4((4))5A) it purchased from Sugarland Road Development, L.L.C. The applicant shall record in and among the deed books of Fairfax County, Virginia, a restrictive covenant on the "Starkey" property within 45 days of approval of this Special Permit Application stating that its "Starkey" property may not be conveyed separate from the Subject Property involved in this application and that the only uses permitted to exist on this portion of the "Starkey" property shall be for screening mosque-related parking and open space uses, or for such other uses as may be permitted by the various governmental authorities pursuant to the subject application(s) described below.
- 30. In order to provide for an area of future parking, if such is needed, and for open space and screening, the applicant shall seek incorporation of that portion of the "Starkey" property (Tax Map parcel 5-4((1)) 5A) located north of the Muddy Branch, as illustrated in Exhibit A, into the special permit property as described below. It is recognized that, in order to incorporate that portion of the "Starkey" property into the site, approval of a special permit amendment by the Board of Zoning Appeals and of a proffered condition amendment to RZ 90-D-058 by the Board of Supervisors are required. The proffered condition amendment and special permit amendment applications necessary to incorporate the "Starkey" property into this special permit shall be filed by the applicant prior to the approval of the final site plan for Phase I and shall be diligently pursued. At the applicant's option, this special permit amendment may or may not include the provision for additional parking on the "Starkey" property. If a site plan for Phase I has not been approved at the time that the special permit amendment is approved, the site plan for Phase I shall include the "Starkey" property; if the site plan for Phase I has been approved previously, any site plan or minor site plan required to incorporate the "Starkey" property into the special permit property, as determined by DEM, shall be filed within one hundred twenty (120) days of the final date of approval of the special permit amendment, and shall be diligently pursued.

If the additional parking has not yet been provided on the "Starkey" property and if, after the completion of Phase I, the demand for ADAMS related parking exceeds that which has been provided as demonstrated by the traffic/parking studies required by Condition #10 as determined by the Office of Transportation, or at such other time as may be determined by the Zoning Administrator in conjunction with the Office of Transportation upon a finding that on-site parking utilization problems or off-site problems exist, ADAMS shall, within forty-five (45) days of notification to do so, file and diligently pursue an additional special permit amendment if such is required and, if required, a special exception amendment application to SPEX 1996-0018 from the Loudoun County Board of Supervisors to establish additional off-street parking on the "Starkey" property, subject to conditions as may be imposed pursuant to the approval of such applications. The applicant shall file a site plan to construct such parking within forty-five (45) days of the approval of the special permit amendment, if such is required and granted, or, if the special permit amendment is not required, within forty-five (45) days of approval of the special exception amendment from Loudoun County if such is required, or, if neither of these applications is required, within forty-five (45) days from the notification by the Zoning Administrator. The applicant shall diligently pursue approval of the site plan, and shall construct such additional parking within four (4) months of the approval of the site plan.

Additional time beyond the time periods set forth in this condition may be granted by the Zoning Administrator upon demonstration by the applicant that delays occurred through no fault of the applicant. Failure to comply by the terms of this condition regarding the incorporation of the "Starkey" property into this special permit shall be grounds for the revocation of this special permit.

31. If requested by DEM at the time of site plan review for Phase I, the applicant shall provide applicable wetland studies. If it is determined that wetlands are located on-site, the applicant shall acquire all of the required permits, including those from the U.S. Army Corps of Engineers. If it is determined that regulated wetlands are located in the area of the site shown to be developed, that a modification of the design shown on the special permit plat is therefore required, and that such modification is not in substantial conformance with the special permit plat, no site plan shall be approved unless and until a special permit amendment is approved by the Board of Zoning Appeals.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. 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. 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 April 2, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 368, March 10, 1998 (Tape 1), After Agenda Items:

Approval of December 9, 1997, Minutes

Mr. Pammel made a motion to accept and approve the December 9, 1997, Minutes. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Dively were not present for the vote.

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Page 368, March 10, 1998 (Tape 1), After Agenda Items:

Request for an Intent to Defer, Appeal, A 1997-SU-026

Mr. Shoup referred to the March 2, 1998, memorandum in which he stated that staff could not support the request because the issues had gone unresolved for quite some time. He said the applicant was pursuing rezoning to try and address most of the issues that were outstanding in the Notice of Violation and had taken steps to address those recently. He said he believed there was still some ways to go on with the rezoning process and given the length of time involved, he could not support the request as an administrative item.

Mr. Pammel said the application had been around for five years and had even been reactivated. He made a motion to deny the request for deferral.

Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Dively were not present for the vote.

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Page 309 March 10, 1998 (Tape 1), After Agenda Items:

Request for Additional Time to Commence Construction for
Special Permit, SP 94-D-058, Stump Dump, Inc.

Mr. Hammack made a motion to approve six months of additional time to September 8, 1998. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Dively were not present for the vote.

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Page 309 March 10, 1998 (Tape 1), After Agenda Items:

Approval of March 3, 1998, Resolutions

Mr. Pammel made a motion to approve the March 3, 1998, Resolutions. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Dively were not present for the vote.

As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: Ann-Marie Wellington

Approved on: October 13, 1998


Susan C. Langdon, Chief

Special Permit and Variance Branch


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 17, 1998. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; and, James Pammel. Robert Dively and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:17 p.m. and asked if there were any matters to bring before the Board. Mr. Kelley added some humor and said he was totally unaccustomed to being at the meeting like this on St. Patrick's Day. The Board then proceeded to hear the After Agenda Items.

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Page 371, March 17, 1998, (Tape 1), Action Item:

Request from J. Randall Minchew, Hazel & Thomas
Regarding Proposed Revision to Development Condition Number 29
All Dulles Area Muslim Society, SP 96-D-038

Mr. Hammack said after the March 10, 1998, public hearing, the Board received a letter from the applicant requesting that the Board reconsider the Development Conditions approved by the Board at that public hearing. He said he would make a motion that the Board reconsider those Conditions and he would then make a follow-up motion that the Board defer decision for two weeks in order to revise the wording of Development Condition 29 in order to clarify certain issues that had been raised since the hearing. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were absent from the meeting.

Mr. Hammack suggested that the Board proceed to Item 3 and approve the March 10, 1998 Resolutions with the exception of the All Dulles Area Muslim Society, SP 96-D-038. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were absent from the meeting.

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Page 371, March 17, 1998, (Tape 1), Action Item:

Approval of March 10, 1998 Resolutions

(This motion was made during the Board's discussion regarding After Agenda Item Number 2, SP 96-D-038 as noted above.)

Mr. Hammack made a motion to approved the March 10, 1998 Resolutions with the exception of the All Dulles Area Muslim Society, SP 96-D-038. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were absent from the meeting.

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Page 371, March 17, 1998, (Tape 1), Action Item:

Request for an Intent to Defer Appeal
Karharias, Inc., t/a The Shark Club Billiards and Café, A 1998-SU-001

Mr. Hammack noted that the Board had received a request to defer this appeal in order to coordinate the Notice of Violation with a Special Permit application that had been applied for by the applicant and that staff suggested a deferral date of July 14, 1998. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were absent from the meeting.

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Page 371, March 17, 1998, (Tape 1), Scheduled Case:

8:00 P.M. GEORGE & MARGARET QUADRINO, FRANCES W. FLETCHER, WILLIAM & JANET BURROW, MARK & GAIL HAYES, AND HAROLD & ARLENE WHITTEN, A 1997-MA-042, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's

determination that Virginia Psychiatric Co., Inc. is the operator of Dominion Hospital and that the Board of Trustees for Dominion Hospital is the hospital's governing board, and therefore Dominion Hospital is in compliance with Conditions #1 and #17 of the Special Exception SE 90-M-005. Located at 2960 Sleepy Hollow Rd. on approx. 11,860 sq. ft. of land zoned R-3, HC, SC. Mason District. Tax Map 51-3 ((1)) 9A.

Mr. Kelley pointed out that the appellants would need the support of all four Board of the Zoning Appeals (BZA) members present to overrule the Zoning Administrator's determination. The appellant's attorney affirmed that they were aware of that stipulation.

Jane Gwinn, Zoning Administrator, said a tremendous amount of paper work had been generated on this appeal on both sides. She explained that the issue was whether Dominion Hospital was in compliance with Development Conditions 1 and 17 of the Special Exception 90-M-005, which was the operative special exception that applied to this property. Condition Number 1 of the special exception limited the approval to the proposed operator, HCA Dominion Hospital, and provided that the special exception approval was not transferable without approval of a special exception amendment by the Board of Supervisors. Ms. Gwinn noted that prior to the special exception approval there had been a revised affidavit submitted which stated that the owner and applicant was Virginia Psychiatric Company, Inc., dba HCA Dominion Hospital. In 1996, Virginia Psychiatric Company became part of the Columbia Arlington Health Systems, L.L.C. and questions were posed as to whether this change resulted in a change of operator, thus a violation of Condition Number 1. She pointed out that the BZA had received major documents regarding this point and proceeded to briefly discuss each of those items. Ms. Gwinn said based upon those documents, and the license issued by the State of Virginia to Virginia Psychiatric as the operator, it was her position that the operator of Dominion Hospital continued to be Virginia Psychiatric.

With regard to Condition Number 17, which was intertwined with Condition Number 1, Ms. Gwinn said this Condition required the Hospital to seek to appoint a member of the local community to the Hospital's Governing Board. She said since it was her position that Virginia Psychiatric is the operator, she did not believe that the appropriate board under this condition was the Board of Governors for the L.L.C. In light of the duties of the Board of Trustees for Dominion Hospital, it was Ms. Gwinn's position that this was the governing body for purposes for this condition and Dominion Hospital had complied with the condition since they had recently appointed a member from the local community.

Ms. Gwinn said she was purposely keeping her comments brief based on the volume of paperwork received by the BZA, but that she would be happy to answer any questions.

The appellant's representative, Mark Hayes, said he was appearing before the BZA as an appellant in this case and on behalf of his fellow appellants. He explained that the appellants were requesting that the Board overturn the Zoning Administrator's determination of November 21, 1997, with respect to Conditions 1 and 17 of SE 90-M-005. He explained that in December, 1997, the appellants filed a notice of appeal and submitted a great deal of paperwork addressing the issues which were quite detailed. Mr. Hayes said he would not be able to address all the issues brought forth in the documentation in his presentation time of ten minutes, but there were citizens present who would speak to help supplement his comments.

Mr. Hayes addressed Condition Number 1 by stating that the appellants believed that the Zoning Administrator had ignored the significance of the L.L.C. and ignored the fact that it was a stand alone entity. The appellants also believed that the Zoning Administrator had placed undue reliance on the hospital documentation. Mr. Hayes called the BZA's attention to the viewgraph displaying a chart which depicted L.L.C. as the new operator of Dominion Hospital by a transfer of control, which was done without the approval of the Board of Supervisors. In 1990, Arlington Hospital had no ownership interest whatsoever with respect to the hospital and the chart depicted that Arlington Hospital now had a 50 percent control with Virginia Psychiatric now owning less than 50 percent. He displayed a copy of the lease wherein Virginia Psychiatric was depicted as the landowner, not the tenant, and the term of the lease was 50 years plus. Mr. Hayes raised several questions which he believed needed to be answered and stated that the Zoning Administrator had failed to take these into consideration prior to rendering her determination.

With respect to Condition Number 17, Mr. Hayes said if the hospital was being run by the L.L.C. and the

L.L.C. had a governing body, there should be an appointment to the governing board from the local community. He said the appellants believed there had been a change in operator and that the Zoning Administrator failed to pay proper attention to the situation and the neighborhood deserved better treatment; therefore, the appellants asked that the BZA overturn the Zoning Administrator's determination dated November 21, 1997.

There were no questions for the appellant's representative and Chairman DiGiulian called for speakers to the appeal.

John Myer, President of the Ravenwood Park Citizens Association, 6231 Kilmer Court, Falls Church, Virginia, expressed concern for the safety of the elderly and single homeowners in the neighborhood based on the number of incidents involving patients who had escaped from the hospital. He said when the special exception was approved in 1990, it was the Board of Supervisors intent to provide a local community serving hospital, not a regional psychiatric network system. Mr. Meyer stated Condition Number 1 specifically required additional public hearings and the Board of Supervisors approval for a change in operating control. He asked that the BZA overturn the Zoning Administrator's determination in this matter.

Ken Rapuano, 3202 Juniper Lane, Falls Church, Virginia, read a prepared statement into the record citing that Columbia Dominion Hospital was built under a special permit in the 1960s as a nursing home called the Buffalo Hills Convalescence Home. He said a new special permit was granted in 1970 to permit a new owner and operator, American Health Services, Inc., to add a psychiatric unit to the nursing home for "psychiatric care on a convalescence basis only". Mr. Rapuano asked the BZA to uphold the appeal. (A copy of his prepared statement is contained in the file.)

Jeff Dender, President of the Seven Oaks Civic Association, 3015 Seven Oaks Place, Falls Church, Virginia, read a prepared statement into the record which addressed Development Condition Number 1 which he believed to be very specific and asked the BZA to bear in mind that the land occupied by Dominion Hospital was residential property and as such was not zoned for use as a psychiatric hospital. He asked the BZA to reverse the Zoning Administrator's determination. (A copy of his prepared statement is contained in the file.)

George Fitchko, immediate Past President of the Buffalo Hills Civic Association, 3027 Hazelton Street, Falls Church, Virginia, read a prepared statement into the record which stated that in January 1997, the communities met with Dominion Hospital to be briefed on organizational changes at the hospital that had been implemented. The community was shocked to learn that Virginia Psychiatric Company, Inc., without gaining County approval through a special exception amendment, had enlarged their operation into a regional network and relinquished operational control to a new corporate joint venture, L.L.C., which the appellants believed violated Condition Number 1. Mr. Fitchko asked the BZA to uphold the appeal. (A copy of his prepared statement is contained in the file.)

Anne Pendleton, immediate Past President spoke on behalf of Sleepy Hollow Civic Association, 3028 Knoll Drive, Falls Church, Virginia, read a prepared statement into the record which stated that the documents attached to the Zoning Administrator's November 21, 1997, determination stated that Virginia Psychiatric contributed all of its operating assets to the L.L.C. She questioned how the hospital could claim to operate if it had no operating assets and had negotiated a long term lease with a tenant who owned all the assets. Ms. Pendleton asked the BZA to reverse the Zoning Administrator's determination. (A copy of her prepared statement is contained in the file.)

Ed Ruggiero, 3211 Patrick Henry Drive, Falls Church, Virginia, read a prepared statement into the record and submitted a copy of the hospital's 1992 Non-Residential Use Permit into the record which was issued in the name of Dominion Hospital dba Virginia Psychiatric Co., Incorporated. Mr. Ruggiero said he believed the hospital had violated Condition Number 1 and asked the BZA to overturn the Zoning Administrator's determination. (A copy of his prepared statement is contained in the file.)

Jane Harvey, spoke on behalf of the Ravenwood Civic Association, 3129 Sleepy Hollow Road, Falls Church, Virginia, and said Ms. Gwinn's determination failed to consider the impact of the hospital's regional enlargement on the community. She cited an incident when a patient escaped from the hospital

unknown to the hospital and was not returned to the hospital until six hours later. Ms. Harvey said the community supports the best possible care for the mentally ill in appropriate settings, but they want to ensure the security of their homes and families. (A copy of her prepared statement is contained in the file.)

Shirley Fegan, Director of Congressional Schools of Virginia, 4715 Declaration Court, Annandale, Virginia, cited incidents of patients escaping from the hospital which required that the school do a "lock in" for the students and staff and expressed concern for the continuing pattern of escapes from the hospital. Ms. Fegan said when the school wished to expand their use they had to go through the public hearing process and the hospital should be required to follow the same process. She asked the BZA to overturn the Zoning Administrator's determination.

Henry Strickland, former member of the Fairfax County Planning Commission, 3035 Holmes Run Road, Falls Church, Virginia, said he served on the Planning Commission in 1990 and was involved in the public hearing process of the current special exception. Mr. Strickland said a special exception was granted only to the current operator and was not transferable without approval of the Board of Supervisors. (A copy of his prepared statement is contained in the file.)

Anne Pendleton came forward and read a prepared statement on behalf of Congressman Thomas M. Davis, residing at 3304 Juniper Way, Falls Church, Virginia, into the record. (A copy of the Congressman's prepared statement is contained in the file.)

Mary Northrup came forward to read a prepared statement into the record on behalf of Christine R. Trapnell, former Fairfax County Board of Supervisor for Mason District, residing at 3416 Mansfield Road, Falls Church, Virginia, wherein Ms. Trapnell asked the Board to overturn the Zoning Administrator's determination. (A copy of her prepared statement is contained in the file.)

Elsa Angell, 6420 Ichabod Place, Falls Church, Virginia, came forward to address Development Condition Number 17 which she believed the hospital had violated. She asked the BZA to overturn the Zoning Administrator's determination. (A copy of her prepared statement is contained in the file.)

Ray Friday, 3126 Valley Lane, Falls Church, Virginia, agreed with the comments of Ms. Angell. Mr. Friday addressed Development Condition 1 and asked the BZA to overturn the Zoning Administrator's determination. (A copy of his prepared statement is contained in the file.)

Mr. Kelley said that in the fourth line of Mr. Friday's prepared statement, he indicated that the Zoning Administrator had not carefully researched prior to rendering her determination. He assured the speaker that Ms. Gwinn had done so. Mr. Kelley added that the speaker may not agree with the determination, but he was confident that she had carefully researched all the documents involved prior to making her decision.

Mary Northrup, Vice Chair of Community Advisory Board of Dominion Hospital, 5429 Ichabod Place, Falls Church, Virginia, stated that the configuration of Dominion Hospital had changed but Ms. Gwinn had essentially permitted Dominion and the L.L.C. to bypass this zoning application requirement. (A copy of her prepared statement is contained in the file.)

Lee Fifer, Attorney with McGuire, Woods, Battle & Boothe, represented Dominion Hospital. He said a prepared statement had been submitted into the record and he would try to clarify issues brought out by the speakers. Mr. Fifer asked the BZA to be clear on all issues prior to making their decision, particularly with respect to Development Condition Number 1, since it could eventually result in the closing of the hospital.

Mr. Hammack asked the speaker if Virginia Psychiatric is a member of the L.L.C. and had less than a 50 percent interest in the L.L.C., and if assets had been transferred into the L.L.C. Mr. Fifer replied that Virginia Psychiatric did have less than a 50 percent interest in the L.L.C. He added that although assets were transferred when Virginia Psychiatric became a member of the L.L.C., no real estate was transferred. Mr. Fifer clarified that the hospital was the landlord under the Management Agreement and its contribution to the L.L.C. was the lease and its assets.

Further discussion took place between Mr. Hammack and Mr. Fifer regarding the ownership/ operating

Page 375 March 17, 1998 (Tape 1), GEORGE & MARGARET QUADRINO, FRANCES W. FLETCHER, WILLIAM & JANET BURROW, MARK & GAIL HAYES, AND HAROLD & ARLENE WHITTEN, A 1997-MA-042, continued from Page 374

issues.

Mr. Pammel said when reviewing the documents prior to the public hearing, he noticed that many of the documents were unsigned. Mr. Fifer said it had been his understanding that letters had accompanied the documents wherein the attorneys who had prepared the documents represented the documents as being true copies. He added that he would be happy to supply the BZA with copies of the signed documents if it were necessary.

Arlene Whitten came forward and read a prepared statement into the record on behalf of Representative Robert D. Hull, wherein he stated that he supported the citizens with respect to Development Condition Number 1. Representative Hull believed that the intent of the Board of Supervisors was clear wherein the approval required that if the operator changed due to a change in its corporate nature, it required an amendment to be filed and reviewed. Since it appeared that the circumstances surrounding the operation of the hospital had changed, the hospital was in violation of Development Condition Number 1 of the special exception under which they operate. Representative Hull asked the BZA to uphold the citizens in their appeal and restore the trust and faith that the citizens placed in the County when the special exception was granted.

Bill Burrow, 3208 Juniper Lane, Falls Church, Virginia, agreed with Representative Hull's comments regarding trust and disagreed with the repeated wording contained in the documents presented by the hospital that "nothing had changed". Mr. Burrow cited all the different names referring to the hospital in the documents and questioned who actually officiated over the hospital.

Chairman DiGiulian called for closing comments. Ms. Gwinn waived closing comments.

In his closing remarks, Mr. Hayes said he may have failed to mention in his opening remarks that he was an attorney and that he was familiar with L.L.C.s. He added that he spent a great deal of time researching this case trying to determine what had occurred. Mr. Hayes pointed out that there were other options open to the hospital, perhaps not as pleasant as the hospital might want, but he believed the community would be willing to cooperative with the hospital should the vote go against the hospital. Mr. Hayes asked that the BZA overrule the Zoning Administrator with respect to Development Conditions 1 and 17 of SE 90-M-005

There were no questions from the Board and Chairman DiGiulian closed the public hearing.

Mr. Pammel said in reviewing the documents it appeared that the land area for the subject property was 2.54 acres and since the matter of acreage had been of issue before the BZA in previous cases, it appeared that this site did not meet the 5 acre requirement. He added that he could find no document stating that the Board of Supervisors had waived that requirement; therefore, he would interpret by omission that this was a flawed special exception. Unfortunately, since it was appealed within the allowed time frame, the special exception stands as approved. Mr. Pammel pointed out that the intensity of the use on the site was quite significant if it was equated to persons per acre and definitely more than anything else in the Seven Corners area and probably comparable to what was in the Bailey's Crossroads area in the Skyline project.

Mr. Hammack said there were two issues before the BZA: 1) the meaning and intent of the word "operator" as contained in the development conditions in 1990; and, 2) whether the appointment to the board met the intent of Development Condition Number 17. He said the BZA was in a particularly good position to consider what the intent of Development Condition Number 1 was in 1990, as the hospital had been before the BZA and the BZA imposed conditions regularly on applicants for various uses under this statute. Mr. Hammack believed the Board of Supervisors clearly intended that any change in operator would have to come back to them for review, which was the issue presented to the BZA.

He stated that the Limited Liability Company (L.L.C.) was a new operator for purposes of the application of Development Condition Number 1 under the Code of Virginia. The L.L.C. was an independent company which could sue and be sued with its members not personally liable for the debt or actions of the company. In this particular case, Virginia Psychiatric had a minority interest in the L.L.C., it had transferred assets of some value to the L.L.C., it served whatever function it was performing with the concurrence of the

Page 376, March 17, 1998 (Tape 1), GEORGE & MARGARET QUADRINO, FRANCES W. FLETCHER, WILLIAM & JANET BURROW, MARK & GAIL HAYES, AND HAROLD & ARLENE WHITTEN, A 1997-MA-042, continued from Page 375

members of the L.L.C., and it was under the control of the other members of the L.L.C. Mr. Hammack made a motion to overrule the Zoning Administrator's determination with respect to Development Conditions 1 and 17. Mr. Pammel seconded the motion.

Mr. Kelley said he would oppose the motion as he believed that the Zoning Administrator had clearly done her job and that he could not find fault with her findings and conclusions. He said he had done everything possible at the beginning of the public hearing to persuade the appellants to request a deferral until more BZA members could be present, but that the number of members present was not sufficient for him to vote to overturn the Zoning Administrator.

The vote on the motion to overrule the Zoning Administrator was 3-1 and the motion failed because it takes four affirmative votes to overturn a decision made by the Zoning Administrator. Mr. Dively and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:43 p.m.

Minutes By: Betsy S. Hurtt

Approved on: June 22, 1999

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

077

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 24, 1998. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble. Robert Dively was absent from the meeting.

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 30, March 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GEOFFREY & ELAINNE LEA, VC 98-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure, construction of six foot high fence and existing six foot high fence to remain all in the front yard of a lot containing less than 36,000 sq. ft. Located at 6505 Beverly Ave. on approx. 10,925 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((27)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Geoffrey Lea, 650 Beverly Avenue, McLean, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation, as contained in the staff report dated March 17, 1998, prepared by Jennifer Smolko, Planning Intern.

Mr. Lea explained that his lot is defined in the Zoning Ordinance as a through lot; therefore, both his front and back yard is considered as a front yard with the usage of them restricted to that of a front yard. He stated that he sought a variance to allow the existing 6-foot high fence to remain, to construct a tree-house and to build a swimming pool. He noted that there was never any mention from the realtor or in the paperwork that the property was a through lot and the resulting Ordinance restrictions severely hampered the use of his property. He explained his lot's topography, the fact that his lot was narrow and long, he has four adjoining neighbors, the sidewalks, the question of safety for his children, the lack of privacy, the problems with cut-through pedestrian traffic, the fact that a 4-foot tall fence offers no privacy and affords no security, and the loss of property value because a through lot has so many restrictions. Mr. Lea pointed out the numerous and costly improvements he has performed to improve, beautify and landscape his property, to construct the fence and to pay for the variance fee. Mr. Lea read his Statement of Justification, which is contained in the file, to warrant the variance.

Chairman DiGiulian called for speakers in support of the application and received no response. He then called for speakers in opposition to the variance request.

The following speakers came forward to speak in opposition to the variance request:

Ms. Wendy Gradison, 1811 Birch Road, McLean; Mr. Lee Goldman, 1811 Birch Road, McLean; Robert & Patricia Child, 1814 Birch Road, McLean; Ms. Terry Eidserman, 1818 Birch Road, McLean; Ms. Edna Comley, 1810 Birch Road, McLean, who read her neighbor's statement; Ms. Alice Buttelman, 1812 Birch Road, McLean; James and Frances Pierce, 1804 Birch Road, McLean; Dorthy Kang, Birch Road, McLean.

The issues were that the 6-foot high, stockade fence ruined or blocked one's view; that it changed the fundamental character of the neighborhood; that a swimming pool was not appropriate in one's front yard; that the Leas had not properly informed the neighborhood of their intentions; the fact that the property values of others would be adversely affected if a 6-foot high fence was allowed to remain flush against the sidewalk; the fact that the majority of the neighborhood opposed the application; that the stockade fence was constructed sans a permit; the neighbor's unanimous opinion that a stockade fence is unattractive, aesthetically displeasing, is obtrusive, is not supported, and is against the law and is detrimental to the entire neighborhood.

Mr. Pammel commented that the Leas, in fact, have no back yard and are deprived of reasonable use of their property and questioned whether or not a board-on-board fence would be less objectionable.

In rebuttal, Geoffrey Lea stated his appreciation of his neighbor's statements but reaffirmed that he was an innocent victim; that they acquired the property in good faith; that property defined as a through lot is not the norm and information on the restrictions is not easily attained; the fact that he intends to keep a fence, albeit it four feet instead of six feet; the fact that enforcement of the Ordinance prohibits his family from reasonable use of their property; the fact that a professional contractor had extended the original fence which was a stockade style; the fact that the fence is not flush against the sidewalk but has a five-foot setback; they will screen the pool and portions of the fence with substantial plantings; and they will place the pool as close to the house as the Ordinance will permit.

Chairman DiGiulian closed the public hearing.

Commenting that the Leas should not be denied reasonable use of their property, Mr. Hammack moved to Approve-In-Part VC 98-D-007, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 17, 1998.

Messieurs Pammel and Ribble seconded the motion.

Mr. Kelley moved to amend Mr. Hammack's motion and remove the pool from the variance application but it died for lack of a second.

Mr. Pammel commented that the Leas' lot had an unusual configuration, that it had severe design restrictions, that its design had impacts, that the Leas' hardship was primarily created by the County in the subdivision's approval, and that these unusual circumstances of the Leas must be recognized by the Board and be considered so as to afford the applicants reasonable use of their property.

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

GEOFFREY & ELAINNE LEA, VC 98-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structures, construction of six foot high fence and existing six foot high fence to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6505 Beverly Ave. on approx. 10,925 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((27)) 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 March 24, 1998; and

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

1. The applicants are the owners of the land.
2. To deny this application would, for practical purposes, confiscate the functional use of the back yard and the applicants should not be denied the use of their property.
3. The lot has extenuating circumstances in that it is a through lot with two fronts.
4. The lot's topography justifies a six-foot high fence for both privacy and safety.

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

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

- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of a fence, pool, and swing set shown on the plat prepared by Kenneth W. White, dated October 22, 1997, revised through March 27, 1998 submitted with this application and is not transferable to other land.
- 2. Building Permits shall be obtained prior to any construction if required and final inspections shall be approved.
- 3. The six-foot fence shall be set back thirty feet from the property line on Birch Road to comply with the Ordinance's minimum set back requirements and the four-foot fence, allowed by right, shall be the maximum height from the thirty-foot setback up to the property line along the street.

Pursuant to Sect. 18-407 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.

Messieurs Pammel and Ribble seconded the motion which carried by a vote of 4-1 with Mr. Kelley opposed. Mr. Dively was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DIANE M. FAULKNER & CHRISTIAN DELOSS FAULKNER, VC 98-M-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 3105 Lewis Pl. on approx. 11,796 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 239.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christian Deloss and Diane M. Faulkner, 3105 Lewis Place, Falls Church, Virginia replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as contained in the staff report dated March 17, 1998.

Christian Faulkner explained that the requested variance would permit construction to upgrade their kitchen and dining room which would entail enclosing and extending the existing wooden deck length-wise and adding a front addition. He pointed out that their next-door neighbors support their variance application.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Pammel moved to approve VC 98-M-005 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated March 17, 1998.

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

DIANE M. FAULKNER & CHRISTIAN DELOSS FAULKNER, VC 98-M-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 3105 Lewis Pl. on approx. 11,796 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 239.

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 24, 1998; and

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

1. The applicants are the owners of the land.
2. The lot has an unusual configuration as it is narrow in the front, where the addition is proposed, and flares out towards the rear.
3. The variance request is minimal at only 1.2 feet.

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Charles E. Janson, dated October 15, 1996, revised by Lynn A. Myers, Architect date stamp received January 9, 1998, 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 4-0 vote with Mr. Kelley not present for the vote; Mr. Dively 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, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GEORGE SUMMERS, VC 98-D-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from front lot line and accessory structure 18.0 ft. from front lot line. Located at 1020 Millwood Rd. on approx. 5.66 ac. of land zoned R-E. Dranesville District. Tax Map 13-3 ((5)) 8A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Summers, 1024 Millwood Road, Great Falls, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation, as contained in the staff report dated March 17, 1998. At the request of Mr. Ribble, Ms. Powell said that she would provide the Board with a copy of the applicant's previous variance, which, in 1986, approved the construction of a dwelling 10 feet from the lot line, but had expired.

Mr. Summers called the Board's attention to an aerial photograph which evidenced his property's topography, the pond, his present dwelling unit, the proposed placement of his new home, the delineation of the Difficult Run Valley watershed and floodplain, the neighbors adjoining property, the site's steep slopes and the location of Millwood Road. He pointed out the environmental sensitivity of the site and the fact that he proposed to perform extensive foliage and tree save with minimum vegetation removal. Mr. Summers maintained that his pond would not be affected by any construction and that his new house would be customized to accommodate his smaller household, only he and his wife, and that the new home would be their retirement home.

In response to Mr. Hammack's question, Mr. Summers pointed out the minor difference in the 1986 application with the one before the Board today and he explained in further detail the site's topography.

Chairman DiGiulian called for speakers and receiving no response closed the public hearing.

Mr. Ribble moved to approve VC 98-D-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated March 17, 1998.

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

GEORGE SUMMERS, VC 98-D-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from front lot line and accessory structure 18.0 ft. from front lot line. Located at 1020 Millwood Rd. on approx. 5.66 ac. of iand zoned R-E. Dranesville District. Tax Map 13-3 ((5)) 8A1.

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 24, 1998; and

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

1. The applicant is the owner of the land.
2. The property has exceptional shape and topography.
3. The floodplain restricts the area where the applicant can build.

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

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

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

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

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

1. This variance is approved for the location of a dwelling and accessory structure (garage) shown on the plat prepared by Raymond A. Frost, Land Surveyor, dated December 5, 1997, revised January 7, 1998, 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. Dively 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, 1998. This date shall be deemed to be the final approval date of this variance.

Before the next application was called, Mr. Summers took the opportunity to commend the Board of Zoning Appeals for their time and consideration spent weekly in resolving citizen issues and in interpreting, upholding, and maintaining Ordinance provisions. On behalf of the citizenry, he expressed his appreciation for their efforts.

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Page 384, March 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RUSSELL B. & JO ANN LEWIS, VC 97-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed lot 1 having a lot width of 6.04 ft., proposed lot 2 having a lot width of 6.3 ft. and proposed lot 4 having a lot width of 39.04 ft. Located at 4513 Carrico Dr. on approx. 2.01 ac. of land zoned R-4. Mason District. Tax Map 71-1 ((1)) 118.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Russell B. and Jo Ann Lewis, 4513 Carrico Drive, Annandale, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation, as contained in the staff report dated March 17, 1998. She stated that it was staff's determination that the subject application did not meet the applicable Zoning Ordinance provisions and if the BZA approved the application, that it be conditioned by requiring conformance with the Proposed Development Conditions dated March 17, 1998, as set forth in Appendix 1 of the staff report.

Mr. Lewis gave a brief long-standing and illustrious history of his family and its residence in Fairfax County. He explained the design of the proposed development, the preservation of the substantial foliage and hardwood trees on-site, the development's configuration which would preserve natural buffers, and the fact that there was natural protection in place which was the reason they were requesting to waive the stormwater management facility because it was not needed. He further explained the site's drainage and water runoff assuring that his adjoining neighbor, Mr. Padgett, would have all his concerns about stormwater runoff addressed by their engineer, Mr. Huntley, at the time of site plan review. Mr. Lewis revealed that health complications for both himself and his wife had greatly influenced their decision to subdivide their property as they were physically unable to properly maintain it. He submitted a neighbor's letter of support which is contained in the record.

In response to Mr. Pammel's question, Mr. Lewis concurred that his lot's unusual configuration precluded the standard type of development that the County allowed by-right.

Chairman DiGiulian called for speakers.

Benjamin Padgett, 4513 Exeter Street, Annandale, said that he had no objection to the proposed development of the Lewis' land but he was concerned that the current problem with water runoff onto his property would be exacerbated. He urged that all appropriate studies and pertinent measures be performed to address and resolve the situation before it became more problematic.

Bob Rendo, 4604 Exeter Street, Annandale, voiced his concern about the environment and the importance of its conservation. He urged the Board to be vigilant and protective of the County's dwindling and necessary natural resources pointing out that he viewed the Lewis's site as a natural watershed protection area which should be preserved.

Timothy English, 4515 Exeter Street, Annandale, reiterated Mr. Padgett's concern about the water runoff problems and requested some assurance that appropriate actions be taken that address the issues if the variance is approved. He stated that, he too, had no opposition to the Lewis's proposal but suggested that some provision be made for emergency vehicle access.

In rebuttal, Mr. Lewis stated that Mr. Huntley, the project's engineer, had reviewed the drainage issues, had determined that it was manageable, and assured that it would be addressed at the appropriate time, during site plan review. He noted the sizes of two holly trees pointing out that they would be relocated. Mr. Lewis explained the proposed traffic pattern for emergency vehicle use clarifying that the situation will be much improved.

After listening to the testimony of the two speakers and considering each's concern about stormwater runoff, Chairman DiGiulian requested that the development conditions stipulate that the applicant would not request a waiver of the stormwater management facility on the eastern portion of the property.

There being no further questions or comments by the Board, Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 97-M-132 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated March 17, 1998. In concurrence with Chairman DiGiulian's suggestion regarding stormwater management facility provisions for the eastern portion of the subject property, Mr. Kelley accepted it as an amended motion which was seconded by Mr. Hammack and carried unanimously by a 4-0 vote with Mr. Ribble not present for the vote.

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

RUSSELL B. & JO ANN LEWIS, VC 97-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots, proposed lots 1 and 2 having a lot width of 6.0 ft., and proposed lot 4 having a lot width of 39.04 ft. Located at 4513 Carrico Dr. on approx. 2.01 ac. of land zoned R-4. Mason District. Tax Map 71-1 ((1)) 118.

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 24, 1998; and

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

1. The applicants are the owners of the land.
2. The storm water runoff issue raised by the neighbors is addressed in Development Condition #3.

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

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

- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance

and will not be contrary to the public interest.

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

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

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

- 1. This variance is approved for the subdivision of lot 118 as shown on the plat prepared by Huntley, Nyce & Associates, Ltd., dated December 1, 1997, revised through February 27, 1998. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
- 2. The driveways to the proposed dwelling units shall be constructed in accordance with the Public Facilities Manual.
- 3. At the time of subdivision plan review, the applicant shall submit to the Department of Environmental Management (DEM) a plat indicating the limits of clearing and grading and a tree preservation plan which preserves trees to the maximum extent feasible. Notwithstanding the limits of clearing and grading shown on the variance plat, the applicant shall submit the plat to the Urban Forestry Branch prior to subdivision approval for review and comment. The limits of clearing and grading shall be adjusted at that time to exclude the rear of proposed Lot 3.
- 4. A waiver of stormwater management facilities shall not be requested for the eastern portion of the lot.
- 5. At the time of subdivision review, the applicant shall submit a soil survey to DEM.
- 6. Prior to clearing and grading, the existing garage, one-story block building and swimming pool shall be removed from the site.

Pursuant 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. Hammack seconded the motion which carried by a 4-0 vote with Mr. Ribble not present for the vote; Mr. Dively 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, 1998. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:39 a.m and reconvened at 10:57 a.m.

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Page 381, March 24, 1998, (Tape 2), Scheduled case of:

9:00 A.M. MARY T. MCCONNELL, SP 97-H-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.2 ft. from side lot line. Located at 10034 Scenic View Terrace on approx. 23,040 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 18-2 ((9)) 124. (DEFERRED FROM 1/27/98 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. Mary T. McDonnell, 10034 Scenic View Terrace, Vienna, Virginia, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation, as contained in the staff report dated January 20, 1998.

Ms. McConnell explained the design, size, materials, roof style, the plantings to screen, and the improvements she added to the deck. She stated that the deck was in place when the property was purchased, that she was unaware that it was in violation, and that she recently submitted an application to permit the deck to her homeowners association. Ms. McConnell submitted that she would do whatever was suggested to make the structure amenable and permitted.

Chairman DiGiulian called for speakers in support.

Ms. Carol Paris, a real-estate broker, explained that she handled the property's sale from the builder to the original owners and then to the McConnells. She clarified that the deck was built 8 years ago, that it was not visible from the street, that it increased the unit's value, and that the neighbors have enjoyed social gatherings on the deck for years with no complaints nor concerns.

Chairman DiGiulian called for speakers in opposition to the special permit request.

Mr. and Mrs. Dean and Leticia Rhoads, 10036 Scenic View Terrace, Vienna, vehemently expressed their opposition to the structure citing that it was obtrusive, unattractive, encroached too close to their property line, was imposing, that it decreased property values, and that it was in violation to their Homeowners Association, Carpers Farm, covenants. (A copy of their testimony is contained in the file).

Mrs. Leticia Rhoads stated that the structure was an eyesore, that she found it offensive, and that she was constantly reminded of it whenever she drove up her driveway as it was in immediate view.

In rebuttal, Mrs. McConnell expressed her concern that she was unaware that there was any neighbor who had an objection. She explained the structure's roofline design, the materials used in the construction, the elevation of the flooring, and the positioning of the structure on the slope of her side yard. She explained her understanding of Carpers Farm rules regarding outside structures and that she was amenable to any changes or suggestions.

Chairman DiGiulian closed the public hearing.

Acknowledging that Mrs. McConnell was seeking to resolve all concerns and make the structure comply to the homeowners covenants, Mr. Hammack stated that a deferral of the decision was warranted. Mr. Hammack then moved to defer decision to June 2, 1998 at 9:00 a.m.

Mr. Pammel seconded the motion which carried unanimously by a 4-0 vote with Mr. Ribble not present for the vote. Mr. Dively was absent from the meeting.

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Page 388, March 24, 1998, (Tape 2), Scheduled case of:

9:00 A.M. CHANTILLY AMUSEMENTS L.L.C., SP 97-Y-028 Appl. Under Sect (s) . 5-503 of the Zoning Ordinance to permit commercial recreation park. Located at the terminus of Brookfield Corporate Dr. on approx. 6.27 ac. Of land zoned I-5. Sully District. Tax Map 44-1 ((6))3B. (In association with PCA 79-S-113 and RZ 1997-SU-030). (moved from 11/25/97 and 2/24/98) (Deferred from 3/10/98 for decision only)

William C. Thomas, Jr., Esquire, representing Chantilly Amusements L.L.C., respectfully requested a two-week deferral to allow resolution of several issues.

Mr. Pammel moved to defer the public hearing to April 7, 1998. The motion was seconded by Mr. Kelley and carried unanimously by a 4-0 vote with Mr. Ribble not present for the vote. Mr. Dively was absent from the meeting.

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Page 388, March 24, 1998, (Tape 2), Scheduled case of:

9:00 A.M. SPRINGFIELD CAMPUS LLC, VC 97-L-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yards. Located at the N. side of Franconia-Springfield Pkwy. approx. 225 ft. N. of the terminus of Lackawanna Dr., on approx. 91.90 ac. of land zoned R-3. Lee District. Tax Map 90-1 ((1)) 58 pt., 59 pt., 60, 60A, 61 pt.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert A. Lawrence, Esquire, with the firm of Hazel & Thomas, Falls Church, Virginia, replied that it was.

Peter Braham, the Staff Coordinator, made staff's presentation as contained in the staff report dated February 3, 1998.

Mr. Lawrence explained the need for a six-foot high security fence around the facility's perimeter by citing protection of its residents in the assisted living quarters to assure they don't wander out into the dangerous thoroughfare of Franconia/Springfield Parkway, and for security protection for other residents of the elderly housing against undesirables who prey upon the elderly. He stated that a fence had no adverse impact on the adjoining properties. Mr. Lawrence requested the deletion of Development Condition #3 so as to allow future flexibility when allocating which portions of the fence would be chain-link or ornamental. He pointed out that deleting #3 clarified the type of fence, not its height which was governed by the variance. Mr. Lawrence stated that, if clarification of the fence's style/type were required, that it would be the subject for a Proffer Condition Amendment (PCA).

In response to Mr. Hammack's question, Mr. Braham explained the purpose of Development Condition #3. He noted that the applicant had indicated that they would seek, though a proffer condition amendment, to change the location of where the ornamental fence would be placed and that staff, after review, would probably object to that change.

Mr. Pammel clarified that if the Board did not approve an amendment to the proffers, that the ornamental fence would have to be constructed in the specified area.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, called upon Mr. Lawrence for his comments.

Mr. Lawrence conceded that the applicant would have to apply for a PCA before any change to the current proffer plan could be made.

There being no further questions or comments by the Board, Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 97-L-113 for the reasons set forth in the Resolution, subject to the

Proposed Development Conditions contained in Appendix 1 of the staff report dated February 3, 1998, deleting Development Condition #3.

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

SPRINGFIELD CAMPUS LLC, VC 97-L-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yards. Located at the N. side of Franconia-Springfield Pkwy. approx. 225 ft. N. of the terminus of Lackawanna Dr., on approx. 91.90 ac. of land zoned R-3. Lee District. Tax Map 90-1 ((1)) 58 pt., 59 pt., 60, 60A, 61 pt.

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 24, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The proposal is unique because of the use and it has unique circumstances because the use necessitates security which warrants the variance.

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

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

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

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

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

1. This variance is approved for the location of a six-foot tall fence in the required front yard in the location as shown on the plat entitled Greenspring Village prepared by Dewberry and Davis, dated September 9, 1997, signed September 18, 1997 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. Hammack seconded the motion which carried by a 4-0 vote with Mr. Ribble not present for the vote; Mr. Dively 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, 1998. This date shall be deemed to be the final approval date of this variance.

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Page _____, March 24, 1998, (Tape 2), Scheduled case of:

9:30 A.M. J.D.A. CUSTOM HOMES, INC., A 1997-HM-033 Appl. under Sect(s). 3-108 of the Zoning Ordinance. Appeal the Department of Environmental Management's determination that the consolidation of two parcels into one as proposed on Subdivision Plan #3804-RP-02-1 did not satisfy the maximum density requirement as set forth in Sect. 3-108 of the Zoning Ordinance and therefore could not be approved. Located at 9516 Leemay St. on approx. 0.90 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A and 28-1 ((1)) 28. (Rescheduled from 1/13/98).

Chairman DiGiulian stated that the appellant's notices were not in order and that staff suggested a deferral date in July 1998.

Mr. Pammel pointed out that the application had been deferred twice and questioned whether or not the appellant was diligently prosecuting.

Ms. Donna Roberson, Senior Assistant to the Zoning Administrator, pointed out that the appellant was not present today to speak on the issue and she understood that the first deferral was requested due to a change in counsel but she was unaware of the reason why the notices were not mailed out.

Chairman DiGiulian said that he would support a deferral with the stipulation that if the appellant was not prepared to prosecute his case at that time, that the Board should dismiss the application for lack of interest. He added that the Board had often rescheduled cases more than twice.

Mr. Kelley suggested to defer action and require that the appellant come before the Board to discuss his case and that the item be listed as an After Agenda Item.

There being no objections, Mr. Kelley moved to defer action on A 1997-HM-033, J.D.A. Custom Homes,

Page 391, March 24, 1998, (Tape 2), J.D.A. CUSTOM HOMES, INC., A 1997-HM-033 Inc., continued from Page

to the next BZA meeting date of Thursday, April 2, 1998.

Mr. Pammel seconded the motion which carried unanimously by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. Dively was absent from the meeting.

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Page 391, March 24, 1998, (Tape 2), Scheduled case of:

9:30 A.M. WAYNE C. GOODE, A 1997-MA-043 Appl. under Sect(s). 3-108 of the Zoning Ordinance. Determination that the appellant is storing a trailer containing equipment associated with his home occupation to lawn service business outside, in violation of use limitations for home occupations as set forth in the Zoning Ordinance. Located at Maplewood Dr. on approx. 13,641 sq. ft. of land zoned R-2, HC. Mason District. Tax Map 61-3 ((11)) 20.

Chairman DiGiulian stated that the Board had issued an intent to defer on March 3, 1998 to July 7, 1998. There being no objections, Mr. Pammel so moved to defer the appeal, A 1997-MA-043, to July 7, 1998. Mr. Kelley seconded the motion which carried unanimously by a 4-0 vote with Mr. Ribble not present for the vote. Mr. Dively was absent from the meeting.

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Page 391, March 24, 1998, (Tape 2), Action Item:

Request for Reconsideration for George & Margaret Quadrino, et al.
A 1997-MA-042

Chairman DiGiulian announced that, at the previous meeting, there was a vote of 3 -1 to overrule the Zoning Administrator on this appeal, however, because 4 votes are required to reverse a decision on an appeal, the Zoning Administrator's position was upheld. He noted that the prevailing member, Mr. Kelley, voiced his reluctance to make a motion on the request but was amenable to have the floor open for discussion.

Mark C. Hayes, Esquire, the agent for the appellants, pointed out that there were two BZA members absent and requested a deferral, for procedural purposes, to a day when the entire Board was present.

After determining that Mr. Hayes had no new issues to present but only sought to argue points of law from the March 17, 1998, meeting, Chairman DiGiulian stated that a reason that warrants a reconsideration is to allow necessary information to be presented that had not been presented initially and that he believed it was inappropriate for Mr. Hayes to present arguments at that time.

Mr. Hayes explained his reasoning and pointed out specifics of erroneous information relied upon by the Zoning Administrator, Ms. Jane Gwinn, which conditioned her decision.

Carson Lee Fifer, Jr., Esquire, with the firm of McGuire, Woods, Battle & Boothe, representing Virginia Psychiatric Company, Inc., dba Dominion Hospital, referencing his March 23, 1998 letter, (which is contained in the file) refuted Mr. Hayes' issues maintaining that, procedurally given Roberts Rules of Order, there was not a justification before the BZA for a reconsideration.

There being no further testimony from either Mr. Hayes or Mr. Fifer, Mr. Kelley stated that his choice of action was not to make a motion.

Mr. Hammack conceded that the issues were complicated, that the entire Board's review was warranted, and that, he believed, a deferral was appropriate.

Mr. Kelley noted his discomfort with the current situation pointing out that, a week ago, he suggested to Mr. Hayes that a deferral of the hearing should be requested.

Chairman DiGiulian stating that regardless of a requested deferral, Roberts Rules of Order mandated that the Board could not rehear the case if there was no motion made by Mr. Kelley.

Observing that there was a citizen in the audience who clearly wanted to verbalize her feelings, Chairman DiGiulian invited her to the podium in order to address the Board.

Ms. Arlene Whitten, an adjoining property owner to the hospital, explained that she supported the hospital's initial request for its special exception. She stated that it was her understanding that, if a problem arose, the sole recourse was to bring the matter before the Board of Supervisors. Ms. Whitten was concerned over the possibility that, because of a technicality, there would be no recourse if Mr. Kelley refused to make a motion. She urged the Board to reconsider its action.

Mr. Pammel moved to defer decision on the request for reconsideration in order to permit the full Board membership to deliberate over the matter of reconsideration to rehear the application.

Mr. Kelley submitted that he had pondered, as one of his options, the motion made by Mr. Pammel but was unsure of its legality. He requested that the Board recognize Karen Harwood, Senior Assistant County Attorney, for insight on the issue.

Karen Harwood encapsulated pertinent Zoning Ordinance language concerning the provisions for decision, the allowable time-frame for filing, and the finalization of a decision. She affirmed that, in her judgment, as she interpreted the language, it was not within the Board's purview to suspend the 8-day finalization of a decision.

Discussion followed among Board members, DiGiulian, Hammack, Kelley, and Pammel, regarding the 8-day finalization of a decision, the provision for reconsideration, and the deferral of a decision.

Chairman DiGiulian advised that the Board of Zoning Appeals does not always operate under Roberts Rules of Order and that under said rules, a simple majority vote carries which is not the case with the BZA. He pointed out that he heard no second to Mr. Pammel's motion to defer the question to reconsider Appeal 1997-MA-042. Mr. Hammack seconded the motion. Discussion followed among Board members regarding the motion on the floor. Mr. Kelley emphatically stated that he refused to make a motion on the item. Therefore, Mr. Pammel, conceding that Mr. Kelley was the only member who could move for reconsideration, withdrew his motion and then Mr. Hammack withdrew his second. The matter was rendered moot.

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Intent to Defer Request regarding Your Childs Place, VC 97-H-099 & SPA 95-H-007

Mr. Pammel stated that the applicant had requested a deferral of its public hearing, scheduled for April 7, 1998, in order to allow additional time to revise its proposed special permit plat and to address staff issues. He then moved to defer the public hearing on this item to June 9, 1998 at 9:00 a.m.

Mr. Hammack seconded the motion which carried by a unanimous vote of 5-0 with Mr. Ribble not present for the vote. Mr. Dively 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 11:56 a.m.

Minutes by: Paula McFarland

Approved on: July 7, 1998

Susan C. Langdon
Susan C. Langdon, Chief
Special Permits & Variance Branch, BZA

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 April 2, 1998. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Mr. Dively was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m.

Mr. Hammack moved that the Board go into Executive Session to discuss potential legal matters pertaining to the Dominion Hospital appeal. Mr. Pammel seconded which carried by a vote of 4-0. Mr. Ribble was not present at the time and Mr. Dively were absent from the meeting.

The Executive Session was convened at 9:10 a.m. The regular meeting of the Board of Zoning Appeals re-convened at 9:45 a.m.

MR. HAMMACK THEN MOVED THAT THE MEMBERS OF THE BOARD OF ZONING APPEALS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE, ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED BY THE VIRGINIA FREEDOM OF INFORMATION ACT, AND ONLY MATTERS IDENTIFIED IN THE MOTION TO CONVENE EXECUTIVE SESSION WERE HEARD, DISCUSSED, OR CONSIDERED BY THE BOARD OF ZONING APPEALS DURING THE EXECUTIVE SESSION.

Mr. Ribble seconded the motion which carried by a vote of 5-0.

Chairman DiGiulian stated that before he would hear Item #4 of the After Agenda before he heard the regular agenda items.

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Page 393 1998, (Tape 1), Action Item:

All Dulles Area Muslim Society
Proposed Revisions to the Development Condition #29
SP 96-D-038

Mr. Hammack made a motion to approve the development conditions with changes to #29 and added an additional condition. Mr. Hammack moved that 1 through 28 of the previous development conditions that were approved would remain the same. Mr. Hammack stated that the property is located in two counties and that the applicant had to go through an extensive review process in Loudon and Fairfax County. There were outstanding issues which were resolved in the last hearing regarding whether an adjoining property owner would have to be part of an amendment to a Special Exception.

The former Development Condition #29 was renumbered to #30 and the new development condition was numbered 29. Mr. Hammack read the new Development Condition #29 into the record. He wanted included in the condition that the applicant offered to do what was reflected in #29. He wanted the former Development Condition #29, renumbered to #30. What was formerly 30 was renumbered to 31.

The motion was seconded by Mr. Pammel.

Mr. Ribble asked if there was anything that would go into the land records concerning Starkey. Mr. Hammack stated that covenants would be recorded within 45 days, which was included in Condition #29.

The motion carried by a vote of 5-0. Mr. Dively was absent from the meeting.

Chairman DiGiulian called for the first scheduled case.

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Page 393, April 2, 1998, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN C. QUIN, VC 98-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit

construction of addition 5.3 ft. from side lot line. Located at 2504 Villanova Dr. on approx. 12,222 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 384.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Quin, 2504 Villanova Drive, Vienna, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit an attached garage to be located 5.3 feet from the side lot line. A variance of 6.7 feet was requested.

Kevin Quin, the applicant, stated that he was seeking a variance from the side setback requirements to permit construction of a two car garage on the north side of his property. He stated that most of the neighboring properties had two car garages. One of his neighbors requested, and was granted, a variance for a similar request. There was no other place to build the garage. There is enough screening between his house and the immediate neighbor to the north where the garage will be built to block the view of the garage. He stated that he had the support of his neighbors and that the addition would improve the value and appearance of the property.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 98-P-009 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN C. QUIN, VC 98-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from side lot line. Located at 2504 Villanova Dr. on approx. 12,222 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 384. 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, 1998; and

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

- 1. The applicant presented testimony which indicates compliance with the nine standards for the granting of a variance, particularly, the unusual configuration of the lot.
- 2. The lot is exceptionally narrow at the Villanova Drive frontage and tapers to the rear of the lot, providing a very difficult situation for the applicant to make additions to the property without requiring a variance.

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

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

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of an attached garage shown on the plat prepared by Peter R. Moran, dated August 19, 1997, revised on December 1, 1997, 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was absent for the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Ordinance to permit construction of addition 8.2 ft. from side lot line. Located at 3507 Alba Pl. on approx. 20,416 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 131.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John D. Hill, 3507 Alba Place, Fairfax, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an addition 8.2 feet from a side lot line. A variance of 6.8 feet was requested. Staff called the Board's attention to an amended development condition dated April 2, 1998.

John Hill, the applicant, requested that the Board approve the replacement of their existing one car carport with a two-car enclosed garage. He stated that it would increase security and also bring his house up to the standards of the other houses in his neighborhood. He said that it would also enhance the privacy of the adjacent lot. He stated that they had a direct line of sight into their kitchen window coming back and forth from the carport and that the garage would increase their neighbor's privacy. The property narrows towards the front and is also on a hill, and he felt that the only practical place to put the garage would be where the carport is already located. He also stated that the garage would be in harmony with the neighborhood.

Mr. Ribble asked to know if only one corner to the lot would need the variance, to which Mr. Hill replied that both the front corner and rear corner cut into the 15 foot setback

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 98-P-010 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LYNN A. HILL AND JOHN D. HILL, VC 98-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. from side lot line. Located at 3507 Alba Pl. on approx. 20,416 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 131. 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, 1998; and

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

1. The applicant has met the nine required standards for a variance.
2. The topographic conditions and narrowness of the lot in the front were cited.
3. There are converging lot lines toward the front of the lot.

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

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

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

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

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

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

1. This variance is approved for the location of an attached garage with 2nd story room above shown on the plat prepared by John W. Veatch, revised by Donald E. Lipscomb, Jr., dated December 26, 1997, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. FRANCES CLARK, VC 98-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 4005 King Arthur Rd. on approx. 18,762 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((14)) 44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frances Clark, 4005 King Arthur Road, Annandale, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit an attached carport to be located 6.2 feet from the side lot line. A variance of 3.8 feet was requested.

Frances Clark, the applicant, stated that her house was a show house and that the garage that existed had been turned into an office. The carport would protect her cars from the trees in the area that are ruining her cars. She stated that all the surrounding houses had carports or garages, and that her proposed carport would fit in with what was already in her neighborhood.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve VC 98-M-011 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANCES CLARK, VC 98-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 4005 King Arthur Rd. on approx. 18,762 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((14)) 44. 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, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the nine required standards for a variance.
- 3. The lot is a heavily wooded lot and to build to the rear would cause the applicant to have to cut down many trees.

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

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted 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 399, April 2, 1998, (Tape 1), FRANCES CLARK, VC 98-M-011, continued from Page 388

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of an attached carport shown on the plat prepared by Richard J. Cronin, IV, dated January 2, 1998, 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was absent from the meeting..

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 399, April 2, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BURKE VOLUNTEER FIRE & RESCUE DEPARTMENT & FAIRFAX COUNTY BOARD OF SUPERVISORS, VC 97-S-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of building 29.0 ft. from street line of a corner lot. Located at 9501 Old Burke Lake Rd. on approx. 3.48 ac. of land zoned C-5 and R-2. Springfield District. Tax Map 78-1 ((1)) 22B, 23 and 24. (ASSOCIATED WITH SEA 88-S-037) (MOVED FROM 3/24/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ellen Van Huly Bronson, Department of Public Works, and authorized agent, replied that it was.

Gregg Russ, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested approval of a variance to permit the Burke Volunteer Fire & Rescue building to be located 29 feet from the front property line of a corner lot. A variance of 9 feet was requested. The proposal to reconstruct the

building was the subject of a special exception amendment, SEA 88-S-037, which was approved by the Board of Supervisors on March 30, 1998. Staff directed the Board's attention to the amended Development Conditions which changed the date of the plat to March 11, 1998.

Ellen Van Huly Bronson, authorized agent for the applicant, stated that there were unique circumstances that would affect the fire station if the variance was not granted. The site is long and rectangular in shape. The narrowness imposed restrictions on how the facilities were laid out on the site. This also affected the maneuvering room for fire apparatus through the bay. Flexibility is restricted by topographic and hydrologic conditions. Portions of Lot 23 is located within a 100 year flood plain. Redevelopment would require filling a portion of the site, without having adverse impact on the flood plain elevation or adjacent properties. The placement of the building was also affected by the existence of an underground contamination area and an existing monopole. Relocation of the monopole would be cost prohibitive to the fire station. It would force the potential building location toward Old Burke Lake Road which is a short cul-de-sac street which separates the fire station from the post office. The proposal would not be detrimental to other properties.

Larry Bocnick, Volunteer Assistant Chief with the Burke Volunteer Fire and Rescue Department, spoke in support of the application. He stated that the original station was built in 1963 and was damaged in a fire in 1997. There were additions added in the '70s and '90s. The old station, he stated, was inadequate. He stated that the proposal had been carefully designed and planned.

There were no speakers in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 97-S-106 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BURKE VOLUNTEER FIRE & RESCUE DEPARTMENT & FAIRFAX COUNTY BOARD OF SUPERVISORS, VC 97-S-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of building 29.0 ft. from street line of a corner lot. Located at 9501 Old Burke Lake Rd. on approx. 3.48 ac. of land zoned C-5 and R-2. Springfield District. Tax Map 78-1 ((1)) 22B, 23 and 24. (ASSOCIATED WITH SEA 88-S-037) (MOVED FROM 3/24/98). 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, 1998; and

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

- 1. The applicant has 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the fire station building shown on the plat entitled "Special Exception Plat/Variance Plat, Burke Volunteer Fire Department" which was prepared by Bengtson, DeBell & Elkin, LTD. and dated August 11, 1997, as revised through March 11, 1998, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 401, April 2, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD W. FIELDS & KAREN FIELDS, VCA 88-V-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 88-V-048 to permit enlargement of accessory structure located 3.4 ft. from side lot line and to permit 8.7 foot high fence in the front yard. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38. (DEF. FROM 10/14/97 FOR NOTICES; MOVED FROM 12/9/97).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Thomas, 11320 Random Hills Road, Suite 690, Fairfax, VA 22030 agent, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested two variances. The first was to amend VC 88-V-048 to permit a two-story enlargement of an accessory structure, a boat house, 3.4 feet from a side lot line. A variance of 11.6 feet was requested. The second variance was to permit a 7.6 foot high fence in the front yard. A variance of 3.6 feet was requested. The Zoning Enforcement staff responded to a complaint that a metal frame had been installed on top of the stone wall located on the northern side lot line. It was determined that the frame was a part of the wall which made the wall 8 feet

high. Condition #4 in the revised proposed Development Conditions, dated March 24, 1998, requires that the frame be removed.

William Thomas, agent for the applicant, submitted pictures of the property to the Board members to be made a part of the record. Mr. Thomas stated that the orientation of the homes in the area are toward the river. The homeowners consider the front of the home the side that faces the river. The predominant area from the house to the river is protected open space. The house does not have a garage. The applicant wanted to utilize the footprint from the boat house, expanding out toward the pool and across the concrete driveway for the garage. The only area that would be disturbed would be a portion of the grassy area in front of the boat house.

If the garage was moved anywhere else on the property, the applicant would lose some of the trees on the site or it would interfere with the sanitary sewer easement. If the garage was placed further in front of the house, it would obscure the house completely. Mr. Thomas stated that there was no other place to put the garage. He stated that the houses on the left and the right have structures which were similar in concept to the applicant's proposal.

Mr. Thomas stated that all the permits for the property were pulled. He stated that the permits indicated that gates and gate posts were allowed to be well over the height of the applicant's. He stated that all structures and gates were consistent with the surrounding area.

There were no speakers in support of the application.

Max Noah, 820 Archturus on the Potomac, Alexandria, Virginia 22308, spoke in opposition to the application. Mr. Noah objected to both variances which he stated violated the 15 foot setback rules. He stated that he supported the variance for construction of the previous owners' applicant's boat house back in the 1980s, in which he now regrets because it encroached on his property and also the view of the river. Mr. Noah stated that not granting the variance would not pose a hardship for the applicant. He stated that the applicant's proposal would crowd the land. He submitted photographs to the Board depicting the posts which stand 8.7 feet in height. Mr. Noah felt that the garage could be placed to the left of the house which he felt has plenty of room. He also submitted a picture of the wall and stated that the applicant cut down a grove of trees to build it.

Mr. Ribble stated, and staff confirmed that the fence posts were allowed to be the height that they were.

Mr. Hammack questioned staff about the pergola. Staff said that the applicant stated that pergola was intended for storage of pool equipment and that it was not in excess of 8-1/2 feet in height and could be located anywhere on the side yard. Mr. Noah stated that it was not a storage shed and at least 12 feet in height. Mr. Hammack stated that it did not show on the plat. Mr. Noah stated that he made inquiries about it and was told that there was no variance filed for it.

Precilla Noah, 820 Archturus on the Potomac, Alexandria, Virginia 22308, spoke in opposition to the application. She objected to the applicant building onto the existing boat house and to the front fence being over 4 feet high. She indicated that the boat house addition would extend towards the roots of a 70 foot tall sycamore which would further damage its roots. She further stated that the applicants cut down several trees, resulting in the loss of habitat for wildlife. Ms. Noah stated that there were no three car garages in the neighborhood. She also stated that the variance would obscure her view of the river.

Bill Vodra 913 Archturus on the Potomac, Alexandria, Virginia 22308, spoke in opposition to the application. Mr. Vodra spoke on behalf of himself and ten other property owners. He submitted a letter to the Board from ten surrounding property owners that share ownership of the private road that leads to their properties. He stated that the community is small, old, and rural in character. His concern was focused on the obstruction of the view of the river, the increased footprint of the site from the boat house, and the fact that when driving down the road towards the applicants' house, the only view would be of the garage. Mr. Vodra expressed that the applicant proposed radical changes to the community. He stated that the proposed addition could be located elsewhere and still meet the Zoning Ordinance regulations.

Mr. Kelley stated that he did not see why the applicant had to provide the surrounding property owners with a

Page 403, April 2, 1998, (Tape 1), RICHARD W. FIELDS & KAREN FIELDS, VCA 88-V-048, continued from Page 402

view of the river. Mr. Vodra replied by stating that he understood that there were no scenic easements in Virginia but that the Ordinance addresses detriment to adjacent property owners. Mr. Vodra stated that the two-story wall that the applicant proposed would cover two-thirds of his property. There would be no openness and separation of the properties. Mr. Kelley stated that what the applicant could do "by right", would be more objectionable to the surrounding property owners. Chairman DiGiulian stated that the applicant could move the garage closer to the house which would meet the setbacks and still block the view of the river. The Chairman stated that the applicant could do that "by right". Mr. Vodra stated that he did not see a hardship.

June Conway, property owner to the south of the applicant, spoke in opposition to the application. Ms. Conway stated that neither the applicant nor the applicants' attorney never discussed with her any issues with respect to the variances. She said that the proposal was out of character with the surrounding neighborhood and would compromise the integrity of the property. She stated that she could not put a garage on her property without causing a problem for her neighbors, therefore, they elected not to build one. She made reference to Mr. Thomas' comment about the additional structure on her property. Ms. Conway stated that the structure was a cottage and not a garage and that it was there when she purchased the property. She showed staff and the Board a picture of the pergola and the wall on the applicants' property. She stated that the wall was 8.7 feet high and that the pergola was well in excess of that.

Jane Reese, 824 Archurus on the Potomac, Alexandria, Virginia, spoke in opposition to the application. Ms. Reese emphasized that there was no hardship for the applicant. She stated that in speaking with Mr. Fields, he indicated that placing the structure anywhere else would block his view of the river from his office. She stated that if the applicant used the 15 foot setback, it would produce 30 feet of open space. She asked that the Board deny the applicants' request.

Mr. Thomas, in rebuttal, stated that he had new plats to submit which did not show the pergola which was permitted without building permits. He stated that if the pergola was not in compliance, the applicants would either take it down or the applicant would come before the Board for approval. He submitted the new plats to the Board for the record. The new plat indicated the remeasured fence heights and added the concrete driveway.

The wall on the left side of the property, Mr. Thomas stated, was 5.7 feet high. He stated that it appeared to be 8 feet high with the copper tubing, which would be removed. He said that the applicant had put a substantial amount of work and money into upgrading the property and relied heavily on the builders to do the work. Mr. Thomas stated that there was no other way to locate the garage without a variance request. He also stated that even though the Fields cut down several trees, they also planted several trees. He stated that the fencing would provide security and safety. He also said that he faxed information to Ms. Conway and spoke to her by telephone regarding the application. He also indicated that the structure on her property was an accessory structure right on the property line on the street level.

Mr. Hammack wanted to know if it was the intention of the Fields to show the driveway running all the way through on the new plats. Mr. Thomas indicated that it was the applicants' intent and that the driveway would continue to connect with the fence and gate opening. Mr. Thomas was also asked by Mr. Hammack if the applicant intended to have employees working for him at his home office. Mr. Thomas replied that he would not have employees.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VCA 88-V-048 for the reasons stated in the Resolution.

Mr. Thomas asked the Board to consider a motion to reconsider the portion of the variance regarding the fence. Mr. Kelley replied that it should be a part of the new application and negotiations with the neighbors. Mr. Kelley also stated that he hoped that Zoning Enforcement would not act on it until the new application was filed.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD W. FIELDS & KAREN FIELDS, VCA 88-V-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 88-V-048 to permit enlargement of accessory structure located 3.4 ft. from side lot line and to permit 8.7 foot high fence in the front yard. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38. (DEF. FROM 10/14/97 FOR NOTICES; MOVED FROM 12/9/97 at appl. request). 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, 1998; and

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

1. The neighbors made pertinent points with reference to the impact on the neighborhood.
2. There was no adequate justification demonstrating that a hardship existed for which the Board could grant a variance.
3. The applicant has not met the nine required standards for the granting of a variance.
4. What is proposed would significantly impact on the property owners to the north.
5. The proposed two-story addition is large.
6. The wall is a massive structure.
7. The applicant did not conform to the standards set forth with respect to the height of the structure.
8. The property is of a normal configuration and is relatively wide and deep.

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. Dively was absent from the meeting.

Mr. Kelley made a motion to waive the 12 month waiting period. The motion was seconded by Mr. Pammel which carried by a vote of 5-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998.

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9:00 A.M. MAX & MACIE RUBIN, VC 97-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.6 ft. and stairs 21.0 ft. from front lot line. Located at 1124 Marion Ave. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32. (DEF. FROM 2-3-98 & 3-24-98)(Concurrent with SP 98-D-006).

9:00 A.M. MAX & MACIE RUBIN, SP 98-D-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit addition to remain 26.4 ft. from front lot line. Located at 1124 Marion Ave. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32. (Concurrent with VC 97-D-107).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sheila McGrath, agent, 1261B Crest Lane, McLean, Virginia 22101, replied that it was.

Heidi Powell, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested two variances and a special permit for error in building location. The first variance was to permit a covered porch addition located 25.6 feet from a side lot line. A variance of 9.4 feet was requested. The second variance was to permit stairs to be located 21 feet from a front lot line. A variance of 9 feet was requested. The special permit for error was to permit an addition, an enclosure of a secondary entry, to remain 26.4 feet from a front lot line.

Shelia McGrath, agent for the applicant, stated that the house was built in 1929. She stated that the applicant, Macie Rubin, has lupus which is a tissue disease activated by exposure to sunlight. The covered stoop was a part of the original construction which was not considered an encroachment in 1929. The applicant wrapped the stoop with wood siding not realizing that it established an enclosure once that was done. The Rubins asked that the Board allow the stoop to remain as is.

There were no speakers either in support of or in opposition to the application. Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 97-D-107 and SP 98-D-006 for the reasons stated in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAX & MACIE RUBIN, VC 97-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.6 ft. and stairs 21.0 ft. from front lot line. Located at 1124 Marion Ave. on approx.

15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32. (Concurrent with SP 98-D-006)(DEF. FROM 2-3-98 & 3-24-98). 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, 1998; and

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

1. The applicant has met the standards required for a variance, in particular, the fact that the house was built in 1929, before the existing Ordinance.

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

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

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

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

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

1. This variance is approved for the location of a porch and stairs shown on the plat prepared by L.S. Whitson, Land Surveyor, dated February 26, 1998, 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 stairs 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.

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

Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Mr. Dively was absent from the meeting..

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAX & MACIE RUBIN, SP 98-D-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit addition to remain 26.4 ft. from front lot line. Located at 1124 Marion Ave. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22))(B) 32. (Concurrent with VC 97-D-107). 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, 1998; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of the addition shown on the plat prepared by L.S. Whitson, Land Surveyor, dated February 26, 1998, submitted with the 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.

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. Dively was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 408, April 2, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MONTE P. ASBURY, JR. T/A THE CUE CLUB, SPA 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 95-M-011 for billiard hall to permit continuation and expansion of use and modification to development conditions. Located at 7014-7018 Columbia Pi. on approx. 5.30 ac. of land zoned C-6, HC, SC. Mason District. Tax Map 60-3 ((1)) 21, 21A, 21B. (def. From 3/3/98 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. Monte Asbury, applicant, 6354 Carolyn Drive, Falls Church, Virginia, 22044, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested an amendment to SP 95-M-011 in order to add 800 square feet of tenant space for a total of 4,000 square feet devoted to the billiard parlor. The applicant also requested approval of the billiard parlor without term and an increase in the hours of operation to 24 hours per day throughout the week. All issues were addressed with regard to an increase in space and the continuation of the use without term. However, the increase in hours was not addressed in the development conditions. Staff recommended approval of the application subject to the development conditions contained in the staff report dated February 24, 1998.

Chairman DiGiulian wanted to know if the hours of operation were more restrictive than other parlors. Staff replied that the hours were generally the same as other operations.

Monte Asbury, the applicant, stated that he needed the 800 square feet for retail space. The 24 hour request was to offer breakfast for his patrons on the weekends. Mr. Pammel wanted to know what the hours of operation were for other like establishments. Mr. Asbury replied 11:00 a.m. to 2:00 a.m., 7 days per week.

Mr. Hammack wanted to know if there were any reported complaints involving the applicants' establishment. Staff indicated that there were two events within the last year. Mr. Asbury indicated that the two complaints were the result of him calling the police. He stated that he maintained close communication with the Mason Police Department and Supervisor Penelope Gross with the Board of Supervisors. Mr. Asbury stated that the reasons restrictions were placed on his establishment was because of the opposition raised by the surrounding neighbors when he first applied for the application.

Chairman DiGiulian questioned Mr. Asbury about the back entry way into the alley and who had access. Mr. Asbury stated that only he and his wife used the back entrance along with delivery drivers. The Chairman asked whether the building blocked the noise from the neighbors, in which Mr. Asbury replied that it did and that the surrounding buildings or properties were zoned C-6, which is commercial land.

Mr. Kelley wanted Mr. Asbury to identify other billiard parlors that were open 24 hours per day. Mr. Asbury mentioned Royal Billiards on Route 1 but he stated that he did not know if they had a permit to open 24 hours per day. Staff addressed the issue by stating that there were no other like special permit establishments that stayed open 24 hours, that they had to close down by 2:00 a.m. Staff also indicated that they had no information on Royal Billiards.

Jim McWater, Manager of the Annandale Shopping Center, spoke in support of the application. He attested to the fact that Mr. Asbury had been a compliant tenant and that he wanted to keep him as a tenant. He stated that the two incidents that occurred at the parlor in which the police were called, happened because Mr. Asbury refused to serve a patron that was inebriated.

Royce R. Garrett, 5105 Kingston Drive, Annandale, Virginia, represented the Annandale United Methodist Church. He spoke in opposition to the application. He did not object to the additional space for retail sales but he objected to the extended hours. He stated that there were a lot of activities at the church that involved young people and that the church wanted to keep the community quiet. He also mentioned that several cars had been broken into at the church. He did say, however, that those incidents were not related to the Cue Club.

Chairman DiGiulian asked Mr. Garrett if there were activities going on at the church after 10:00 p.m. Mr. Garrett replied that there was not.

Alice Smitzer, 4037 Justine Drive, Annandale, Virginia, spoke in opposition to the application stating that she objected to the increase in hours of operation.

Mr. Hammack asked Ms. Smitzer if she were familiar with any of the incidents that occurred at the Cue Club. Ms. Smitzer spoke of an incident where a gentleman on medication consumed alcohol and threw an object through the bakery window. She stated that she heard of that incident through the community.

Monte Asbury, in rebuttal, stated that on Sundays, church members from the Korean community, were always waiting at the doors when his establishment opened. Mr. Asbury reiterated that he just wanted to extend the hours in order to make a profit.

Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve SPA 95-M-011.

There was a discussion between Board members and staff regarding the hours of operation. Chairman DiGiulian commented that all cases should be treated consistently. Mr. Hammack stated that he could not agree to increasing the hours to 24 hours but wanted to have Condition #5 remain as staff proposed. Chairman DiGiulian stated that the 2:00 a.m. closing was typical of what had been granted for other billiard parlors. He stated that noise from the Cue Club would be blocked by the building. Mr. Hammack stated that the fact that the Cue Club had only two incidents over a two year period, was commendable. Mr. Pammel concurred with Mr. Hammack.

The Board asked staff if 2:00 a.m. was the normal closing time for billiard parlors. Staff stated that in the past,

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that was the norm. Mr. DiGiulian stated that the fact that there were only two complaints was a good indication that the Cue Club was a clean operation. Mr. Hammack indicated that he took the proximity of the residential neighborhood as a consideration in making his decision. Chairman DiGiulian stated that the Board would have done the applicant a disservice if the hours were not approved. Mr. Hammack indicated that they were extending the hours, from 12:00 a.m. to 2:00 a.m.

The motion was approved for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MONTE P. ASBURY, JR. T/A THE CUE CLUB, SPA 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 95-M-011 for billiard hall to permit continuation and expansion of use and modification to development conditions. Located at 7014-7018 Columbia Pi. on approx. 5.30 ac. of land zoned C-6, HC, SC. Mason District. Tax Map 60-3 ((1)) 21, 21A, 21B. (def. From 3/3/98 for notices). 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, 1998; and

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

- 1. The applicant is the lessee of the property.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). Sect. 4-603 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7014-7018 Columbia Pike, 4,000 square feet of tenant space within a 5.3 acre site, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Kenneth W. White (Alexandria Surveys Inc.) dated October 27, 1997, 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. The applicant shall demonstrate to the satisfaction of the Zoning Permit Review Branch that there is sufficient on-site parking for the recreational facility billiard hall use and for other uses on the 5.3 acre subject property. If the Zoning Permit Review Branch determines that the required on-site

parking cannot be provided on the subject property, this special permit amendment shall be null and void.

- 5. The maximum daily hours of operation will be from 10:00 a.m. until 2:00 a.m. Monday through Saturday. Sunday opening shall be 12:00 Noon until 2:00 a.m.
- 6. After 10:00 p.m. the rear door on the north side of the building shall remain closed.
- 7. The maximum number of employees on-site at any one time for this use shall be four, the maximum number of patrons on-site at any one time shall be thirty-six (36), the maximum occupancy shall be posted at forty (40) persons.
- 8. The maximum number of billiard tables in the 4,000 square foot unit within the subject property shall be nine (9) and the eating establishment is permitted as an accessory use with a maximum of eleven (11) tables containing twenty six (26) seats and a counter with ten (10) seats within the billiard hall.
- 9. The applicant shall be required to comply with all alcoholic beverage control laws of the Commonwealth of Virginia.
- 10. Transitional screening and barrier requirements shall be waived.

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, twelve (12) months after the date of approval unless a Non-Residential Use Permit has been obtained. 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 4-0. Mr. Ribble was not present for the vote. Mr. Dively was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. GERALD COOPER, A 1997-MA-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the service station use has been discontinued and therefore, the continued sales and installation of tires constitutes the operation of a vehicle light service establishment without required special exception approval. Located at 5919 Columbia Pi. on approx. 35,500 sq. ft. of land zoned C-5, SC and HC. Mason District. Tax Map 61-2 ((1)) 120. (DEF. FROM 9/16/97 AT APP.'S REQUEST).

Chairman DiGiulian indicated that a letter was submitted to the Board requesting a withdrawal. William Shoup, Deputy Zoning Administrator, stated that in his March 23, 1998, memorandum, he noted that outstanding issues in the case could be resolved if the service station use could be reestablished on site and that the appellant dispenses fuel as the primary use. The appellant reinstalled the pumps and storage tank on site but staffs' concern was whether or not the appellant had legitimately reestablished the service station use. In the letter that

was the subject of the appeal, Zoning Administration indicated that the appellant needed to install a 8,500 gallon fuel storage tank and two dispensing stations. The appellant had installed a 10,000 gallon tank but only one dispensing station.

Mr. Hammack asked Mr. Shoup how much time would be needed to establish whether or not fuel dispensing was the primary use on site. Mr. Shoup indicated that Zoning Administration was having difficulty contacting anyone that could give that information. Mr. Shoup was unsure as to whether the appellant intended to install another pump. Mr. Shoup also stated that there were significant outside storage problems on the site which included, tires, rims, and inoperable vehicles. There were several letters submitted by citizens expressing concerns about that issue. Mr. Shoup indicated that the issues involving the outside storage would be another issue that possibly would be coming before the Board but, it was not a part of the present appeal.

Chairman DiGiulian wanted to know if a deferral on the decision to withdraw would give Zoning Administration enough time to verify whether another dispensing pump would be placed on site. Mr. Shoup felt that a few weeks would enable him to verify whether the appellant would, in fact, be placing another dispensing pump on site.

Mr. Hammack made a motion to defer A 1997-MA-019 until April 28, 1998, at 9:30 a.m. Mr. Pammel seconded. The motion carried by a vote of 4-1. Mr. Ribble was absent for the vote. Mr. Dively was absent from the meeting.

Mr. Hammack asked staff to notify the appellant concerning the deferral and to give him an opportunity to address further issues.

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9:30 A.M. AMERICAN LEGION, INC., POST 176, SPRINGFIELD, VIRGINIA, A 1997-LE-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a portable sign in violation of Par. 2 Sect. 12-104 of the Zoning Ordinance. Located at 6520 Amherst Ave. on approx. 39,241 sq. ft. of land zoned C-2, HC, SC. Lee District. Tax Map 90-2 ((1)) 5A. (Moved from 12/2/97 for Notices; Deferred from 2/3/98).

Chairman DiGiulian stated that the Board had received a withdrawal request on the appeal. William Shoup, Deputy Zoning Administrator, stated that the appellant removed the sign that was at issue and that they were working with staff. The appellant committed to installing a permanent free-standing sign.

Mr. Pammel made a motion to accept the request for withdrawal for A 1997-LE-027. Mr. Hammack seconded. The motion carried by a vote of 4-1. Mr. Ribble was not present for the vote. Mr. Dively was absent from the meeting.

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Consideration of Deferral Request
J.D.A. Custom Homes, Inc., Appeal A 1997-HM-033

Dennis Rice, agent, stated to the Board that an extension was needed in order to work with the Department of Environmental Management (DEM) to resolve issues. Mr. Rice asked the Board to allow thirty days to accomplish what needed to be done. Given the timeframe necessary for DEM to conduct a review at the appellants' new subdivision plan submission, William Shoup, Deputy Zoning Administrator, suggested a deferral date of September 22, 1998, at 9:30 a.m.

Mr. Kelley moved to defer Appeal A 1997-HM-033 to September 22, 1998, at 9:30 a.m. Mr. Hammack seconded. The motion carried by a vote of 4-1. Mr. Ribble was absent for the vote. Mr. Dively was not present for the meeting.

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Page 413, April 2, 1998, (Tape 1), Action Item:

Request for Reconsideration of Denial Decision
on Variance Application VC 98-D-007, Elaine Lea

Mr. Hammack stated that he was comfortable with the decision that the Board made on the case at the last hearing. Mr. Pammel agreed with Mr. Hammack and stated that there had been an unusual situation in that case making a variance request unavoidable. Mr. Pammel stated that the applicants were entitled to use their property for the uses they desired as long as they were consistent with regulations that applied, and as long as the use was not incompatible with the surrounding neighborhood. He also stated that the Board has, in the past, approved similar variance requests.

Mr. Pammel made a motion to deny the Request for Reconsideration of Decision on Variance Application VC 98-D-007. Mr. Hammack seconded. The motion carried by a vote of 5-0. Mr. Dively was not present for the meeting.

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Page 413, April 2, 1998, (Tape 1), Action Item:

Approval of Revised Plats
Request for Waiver of the 8-day Waiting Period for
VC 98-D-007:

Mr. Pammel stated that the 8-day waiting period had already passed.

The plats were reviewed and Mr. Hammack moved to approve the revised plats for VC 98-D-007. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote. Mr. Dively was absent from the meeting.

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Page 413, April 2, 1998, (Tape 1), Action Item:

Approval of March 24, 1998, Resolutions

Mr. Pammel made a motion to approve the March 24, 1998, Resolutions. Mr. Kelley seconded the motion. The motion carried by a vote of 4-1. Mr. Ribble was not present for the vote. Mr. Dively 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 12:10 p.m.

Minutes by: Denise Snyder, Deputy Clerk

Approved on: May 19, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 7, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 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 415, April 7, 1998 (Tape 1), Scheduled case of.

9:00 A.M. DOLORES GUINDON GAFFNEY, VC 98-L-014 Appl. under Sect(s). 18- 401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from side lot line. Located at 5730 La Vista Dr. on approx. 11,697 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6))(l) 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. Dolores Guindon Gaffney, 5730 La Vista Drive, Alexandria, Virginia, said it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit a garage addition to be located 7.4 feet from a side lot line. The Zoning Ordinance required a minimum side yard of 12 feet in the R-3 District; therefore, a variance of 4.6 feet was requested.

Ms. Gaffney said that her home was located on a pie-shaped lot. She said even though the lot was 1/4 acre, there was not enough room on either side of the house for a garage. She said the garage would not be unattractive and that there were no objections from her neighbors.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 98-L-014 for reasons noted in the Resolution.

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

DOLORES GUINDON GAFFNEY, VC 98-L-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from side lot line. Located at 5730 La Vista Dr. on approx. 11,697 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6))(l) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 7, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the nine standards required for a variance
- 3. This is an irregularly shaped lot with lot lines converging toward the rear.

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

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

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of an addition (garage) shown on the plat prepared by Kenneth W. White, Land Surveyor, dated December 16, 1997, 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. 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 April 15, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KIM L. ENNIS, SP 98-M-002 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5406 Clifton St. on approx. 10,500 sq. ft. of land zoned R-3. Springfield District. Tax Map 80-2 ((2)) 152.

Page 417, April 7, 1998, (Tape 1), KIM L. ENNIS, SP 98-M-002, continued from Page 416

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kim L. Ennis, 5406 Clifton Street, Springfield, Virginia, said it was.

Jennifer Smolko, Planning Intern with the Zoning Evaluation Division, gave staff's presentation as outlined in the staff report. The applicant was requesting approval of a special permit to allow modification to the limitation on the keeping of animals to permit five dogs to remain on a property of less than 12,500 square feet. The five dogs, which included a Dalmatian, a Lab mix, a Cocker Spaniel, a Boxer, and an Irish Setter are usually indoors but do have access to the back yard through a dog door. The backyard is enclosed with an approximately 3-foot high chain link fence. Staff recommended approval subject to the development conditions dated April 7, 1998. Staff also noted that the property is located in the Mason District and not the Springfield District as stated in the staff report. Staff also noted that the application was advertised correctly.

Ms. Ennis said she had five dogs, of which one had a terminal illness and would pass away probably within 60 days. One did not belong to her but would eventually be returned to her mother who was taking care of a sick relative in Texas.

Ms. Ennis said she had the three remaining dogs since they were born and one of them was a puppy. She said her neighbor was upset with the dogs and she agreed to put up a six-foot wood fence so he would not have to see or hear the dogs. The dogs would remain inside until she returned home from work after 1:30 p.m. each day so they would not have a chance to bark and disturb Mr. Pankowski, who antagonized the dogs. She said the dog that barks most was a one year-old puppy. She said she was under the impression from the previous owner that she had 12,500 square feet but it was not until the neighbors complained that she found she did not have that space. She said the dogs were like her kids and that one did not decide which child to keep and which to get rid of. She said the dogs were geriatric and it was hard to find a good home for them.

Mr. Ribble said the applicant mentioned that one dog did not belong to her and he wanted to know if she was just keeping it. Ms. Ennis responded by saying the dog belonged to her mother who was in Texas. Mr. Ribble asked her how long had she been keeping the dog and the Ms. Ennis said she had the dog for a while because her mother had been in Texas for over one year. She said the only other family member who could keep the dog was her sister and her sister was allergic to the dogs. She also said the dog was too old to travel.

Mr. Dively asked Ms. Ennis if she had a chance to review the letter from Mr. Robert Boyle and she said she had not. Mr. Dively gave Ms. Ennis the letter and told her that he also had a letter from Mr. Russel Beland, who had obtained signatures from several of her neighbors. Mr. Dively gave the applicant the letters for her to review.

Mr. Kelley wanted to know why the applicant was not provided with copies of the letters and staff responded saying the applicant was informed that staff received letters in opposition and they were a matter of public record, if she wanted to review them. She said one of the letters did not come into the office until late on Monday afternoon, on April 9th.

Ms. Ennis said she knew that people were coming in to object, but she did not know she could read the letters. She said that with respect to Mr. Beland's letter, her dogs were not aggressive and that she cleaned up her backyard every two days instead of every day. She said she did not understand how her dogs could frighten passers-by if they were rarely outside and when they were, they were kept in the back yard.

Ms. Ennis said she never met Mr. Beland nor had she seen him at all. In fact, she said that she did not know where he lived.

Ms. Ennis said that in respect to Mr. Boyle, he lived on Montgomery street, which was four streets away. She said that she put up a "Beware of Dogs" sign because she thought she had to and that the dogs had never bitten anyone.

Ms. Ennis said if Mr. Pankowski would not squirt the dogs with water and flap his arms at them, they would not bark at him. She said when the dogs bark, she took them inside and locked the doggie door.

There was no one to speak in support of the application and Chairman DiGiulian called for speakers in opposition.

Vernon Pankowski, 5404 Clifton Street, Springfield, Virginia, stated he was representing himself and his wife. He said they opposed granting a waiver to the Zoning Ordinance to allow the applicant to keep five dogs because the lots were not multi-acre lots and were only 1/4 acre. He said his master and guest bedrooms were less than 18 feet from the fence where the dogs bark frequently when someone walk by. He said the sound of the dogs sometimes was so loud that it seem they were inside his house.

Mr. Pankowski said over the past several years, the dogs had been left unattended from early morning until late at night seven days per week. He said if there was a high fence around the property, he might not have objected to the keeping of additional animals on the property. A letter from Mr. Pankowski was submitted for the files.

Calvin Robinson, 6607 Independence Avenue, Springfield, Virginia, said he represented the Edsall Park Civic Association of which he was vice president. He read his letter of opposition, which was submitted into the files. He said to permit the applicant to keep these pets would be oppressive and unreasonable. He questioned the term "reasonable number" in an urban setting such as Edsall Park. He said each resident was entitled to a degree of privacy and freedom.

Harmon Kallman, 5403 Clifton Street, Springfield, Virginia, said he lived directly across the street from the applicant. He said two dogs was enough and that the precedent involved was considerable. He said though he heard the barking, he was not directly subjected to great pain and suffering, but he could sympathize with his neighbors. He said he was concerned about the future of the neighborhood.

In rebuttal, Ms. Ennis said she had not spoken to Mr. Pankowski nor had they exchanged harsh words. She said her dogs would not be replaced upon their death. She further said the dogs that the neighbors heard barking in the middle of the night did not belong to her. She said the six-foot high fence would solve the problem.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said these kind of problems came up occasionally in Fairfax County and they were always difficult to resolve because the persons, such as the applicant, were unaware they were violating the Zoning Ordinance when they first acquired the animals. He said there was no real intent to create a situation that could be considered unlawful. He referred to the proposed development conditions prepared by staff, which would reduce the impact of the animals without being too draconian in requiring the applicant to remove the animals or dispose of them immediately. He said if the older dog dies, the applicant could return one or the other animal to her mother. This would reduce the number of animal to three, which would still be one over the Ordinance, but which would require a lot of supervision on the part of the applicant.

Mr. Hammack moved to approve SP 98-S-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIM L. ENNIS, SP 98-M-002 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5406 Clifton St. on approx. 10,500 sq. ft. of land zoned R-3. Springfield District. Tax Map 80-2 ((2)) 152. 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 7, 1998;

Page 419, April 7, 1998, (Tape 1), KIM L. ENNIS, SP 98-M-002, continued from Page 418

and

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

1. These kinds of problems come up occasionally in Fairfax and are difficult to resolve, because the applicant is not aware that they are in violation of the Zoning Ordinance when they acquire the animals.
2. There is no real intent to create a situation that could be considered unlawful.
3. The Development Conditions should address the problems.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5406 Clifton Street, 10,500 square feet, shown on the plat submitted by Victor F. McLaughlin and Victor Ghent, dated November 2, 1978, revised by Kim Ennis on January 9, 1998, and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing 5 dogs. If any of these specific animals die or are sold or are given away, or are returned to the applicant's mother, the animals shall not be replaced except that 2 may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used for the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.
5. The dogs shall not be allowed in the yard unsupervised. Barking by the dogs shall be kept to a minimum.

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. Pammel seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 15, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 419, April 7, 1998 (Tape 1), Scheduled case of:

9:00 A.M. YOUR CHILD'S PLACE, INC., VC 97-H-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 6.0 ft. from front lot line. Located at 2580 Chain Bridge Rd. on approx. 10,983 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 50. (Concurrent with SPA 95-H-007).(Rescheduled from 1/27/98, Deferred from 2-24-98).

Chairman DiGiulian called this case and stated that the Board issued an intent to defer until June 9, 1998,

420

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at 9:00 a.m. Mr. Pammel moved to defer SPA 95-H-007 and VC 97-H-099 until June 9, 1998, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page _____, April 7, 1998 (Tape 1), Scheduled case of:

9:00 A.M. BEVERLY J. CAYFORD, VC 98-D-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from front lot line and 9.5 from side lot line. Located at 6525 Byrnes Dr. on approx. 18,336 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((8))(3) 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. Beverly J. Cayford, 6525 Byrnes Drive, McLean, Virginia, said it was.

Heidi Powell, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting two variances to permit construction of a garage addition and a side foundation.

Ms. Cayford said she had two cars but had only a one-car carport, which was slightly set toward the front line of the house. She said the front of the house was the only obvious place to put the garage because there was a large open green area behind the house that extended from her house around to the right to about three or four lots, which she preferred to keep as an open space. She showed photographs explaining how she came up with the measurement for the garage and why the variance was being requested for this particular spot.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-D-013 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BEVERLY J. CAYFORD, VC 98-D-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from front lot line and 9.5 from side lot line. Located at 6525 Byrnes Dr. on approx. 18,336 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((8))(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 April 7, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant does comply with the nine prescribed criteria for the granting of a variance.
3. The shape of the lot is very deep and very narrow which precludes the ability to add an addition to the side of the house.
4. The lot slopes down to the rear making construction of a garage difficult 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (garage) shown on the plat prepared by Jack M. Wilbern, Jr., Architect, dated January 15, 1998, revised through February 12, 1998, 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 and Mr. Dively seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 15, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHANTILLY AMUSEMENTS L.L.C., SP 97-Y-028 Appl. Under Sect (s) . 5-503 of the Zoning Ordinance to permit commercial recreation park. Located at the terminus of Brookfield Corporate Dr. on approx. 6.27 ac. Of land zoned I-5. Sully District. Tax Map 44-1 ((6))3B. (In association with PCA 79-S-113 and RZ 1997-SU-030). (Moved from 11/25/97 and 2/24/98) (Deferred from 3/10/98, and 3/24/98 for decision only).

Chairman DiGiulian called the case and William Thomas, the applicant agent, stated that this was a follow up presentation, and that he reaffirmed the affidavit.

Chairman DiGiulian said the case was before the Board of Zoning Appeals (BZA) for decision only.

Mr. Pammel wanted staff to explain what interpretation of the plan did staff arrive at the conclusion that the application was acceptable and deserved a staff report.

Susan Johnson, Staff Coordinator, Special Exception and Rezoning Division, explained that as stated in Appendix 6, this was considered one of the possible flex uses that could be established in this industrial corporate center. She said staff believed that as long as the application met the provision of the Dulles Suburban Center, it was an appropriate use in that area.

Ms. Johnson further stated that the Comprehensive Plan showed the property planned for mixed use and this was considered one of the possibilities of a mixed use.

Mr. Thomas said the applicant did not come to the County asking for permission to put this particular use anywhere. He said he was guided through several sites to this one. Mr. Thomas said he met with the planning staff before an application was created. He said he met with staff from the Planning Division and Zoning Evaluation Division, and the hotel owners. He said the industrial park had hotel uses that were not called for in the language. Mr. Thomas said they used the same logic and followed the same provisions in the Dulles Airport Corridor Comprehensive Plan language that allowed the applicant in there.

Mr. Thomas said the Plan stated that the industrial flex and offices were the two uses that were called out specifically, but that further language in the Comprehensive Plan stated that other uses were permissible so long as they met the Dulles Airport Design guidelines. He said the berming and landscaping along Route 28 protected the area from the highway and there were no other waterpark facilities in the County to compare it to. Mr. Thomas said he did all the up front research to find out what would work, where it would work, and how it would work. He said this project, which was approved by the Board of Supervisors and the Planning Commission, and went before the Western Fairfax Civic Association twice and received unanimous support at both meetings, followed the same guidelines as the hotels. Mr. Thomas said the go-kart track was moved to the south to resolve the hotel's concern.

Mr. Thomas said this project was supported by citizens and several organizations within the County. He said this project presented a wonderful opportunity for the youth of Fairfax County that was not currently available.

Mr. Pammel said t go-kart tracks were very noisy no matter where they were placed. He wanted to know what the impact would be from moving the go-karts to Lot 4.

Mr. Thomas responded by saying that he had spoken with the owner of Lot 4 several times and they did not have a problem with the go-karts because the northern portion of their lot was undeveloped. He said the go-karts noise was no more than the roadway noise on Route 28. Mr. Thomas compared the go-kart area with the splash downpark located in Manassas. He said the park in Manassas was located only 100 feet from a residential community. Mr. Thomas said the noise on Route 28 was 65 decibels (db), so the noise that the go-kart tracks would generate would be no more than the industrial and auto traffic that was now on Route 28.

Susan Langdon, Branch Chief, Special Permit and Variance Branch, explained how staff determined the land use recommendation. She said on Page 2 of Appendix 6, the text for land unit 3 of, which the parcel was part, was planned for camp-style office and industrial/flex development up to a maximum floor area ratio (FAR) of .35. The analysis stated that the plan text did allow for uses that were not specified in the land unit text, if such uses provided flexibility for economic enterprises and had less of an impact on traffic

at the PM peak. Staff would recommend it, if in addition, it was compatible with the Urban Design Guidelines of the Dulles Suburban Center.

Mr. Pammel said this was a difficult case because there were no specific guidelines set forth and staff had made the interpretation that this falls within the so-called flex-type uses. He said he believed staff had encouraged the applicant to proceed in this direction, as well as the actions of the Board, in granting the proffer condition amendments and the rezoning. He said he still had some reservation because he did not believe the Plan was clear. He said a broad range of uses could be formed from the interpretation that staff used and it would become very subjective. He made a motion to approve SP 97-Y-028 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHANTILLY AMUSEMENTS L.L.C., SP 97-Y-028 Appl. Under Sect (s) . 5-503 of the Zoning Ordinance to permit commercial recreation park. Located at the terminus of Brookfield Corporate Dr. on approx. 6.27 ac. land zoned I-5. Sully District. Tax Map 44-1 ((6))3B. (In association with PCA 79-S-113 and RZ 1997-SU-030). (moved from 11/25/97 and 2/24/98) (Deferred from 3/10/98, and 3/24/98 for decision only). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 7, 1998; and

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

1. The applicant is the owner of the land.
2. There are no specific guidelines set forth.
3. Staff has made the interpretation that this does fall within the so called flex-type uses.
4. Staff has encouraged the applicant to proceed, as has the Board of Supervisors, in granting the proffer development condition amendment in the rezoning.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, Tax Map 44-1 ((6)) 3B, 6.27 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 D.A. Bryant, P.C., dated October 31, 1997 as revised through February 2, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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. Verification of wetland permits, if determined to be required, shall be presented to DEM prior to site plan approval.
6. A 6 foot high masonry wall shall be located along the northern property boundary to buffer the adjacent hotel properties from the park uses, as determined by DEM.
7. A 6 foot high board on board fence shall be located along the length of the southern property line and the row of large evergreen trees proposed along the southern property line shall be extended to the eastern property line, as determined by DEM.
8. The small evergreens proposed between the roller rink building and Route 28 shall be replaced with 6-8 feet tall evergreens to increase the visual buffer between the building and Route 28, as determined by DEM.
9. Parking shall be provided to Code, as determined by DEM. All parking for the commercial park use shall be on-site as shown on the Special Permit Plat.
10. Landscaped islands shall be located within the parking lot every 10-12 parking spaces, and planted with shade trees, as determined by DEM.
11. If an agreement to utilize off-site stormwater management facilities is obtained and approved by DEM, the existing stormwater management pond located on Tax Map 44-1 ((6)) 4 shall be upgraded to PFM standards, as determined by DEM, and maintained as part of this project. If no such agreement is reached, all required stormwater management and BMP facilities shall be located on site and may necessitate a Special Permit Amendment.
12. All trees shown to be preserved on the GDP/SP Plat shall be protected by fencing a minimum of four feet in height, placed at the dripline of the trees to be preserved. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed and a certified arborist shall monitor the installation of the tree protection fencing and verify in writing that it has been installed prior to any work being conducted on the site. In addition, the certified arborist shall monitor the construction work and tree preservation efforts in order to ensure that the commitments made on the GDP/SP Plat are fulfilled.
13. All signs shall conform with the requirements of Article 12 of the Zoning Ordinance. In addition, no pole-mounted signs shall be permitted on the subject property.
14. Hours of operation shall be limited to:
 - Water facility -10:00 a.m. to sundown daily. Opening no earlier than one week prior to Memorial Day and closing no later than two weeks after Labor Day.
 - Go-kart Track -10:00 a.m. to 10:00 p.m., Sunday through Thursday; 10:00 a.m. to 11:00 p.m., Friday and Saturday. Open year round.
 - Roller Rink Building -10:00 a.m. to 11:00 p.m., Sunday through Thursday; 10:00 a.m. to 1:00 a.m., Friday and Saturday. Open year round.

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 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 15, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. JAMES L. BLEVINS, A 1997-SU-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has expanded the nonconforming use of a motor freight terminal, added structures to the property without approval of Building Permits, is maintaining a lumber yard/building material yard and a storage yard, is storing fireworks and is operating a retail sales establishment on the premises, all in violation of Zoning Ordinance provisions. Located at 15900 Lee Hwy. on approx. 12.4857 ac. of land zoned R-C, WS. Sully District. Tax Map 64-1 ((1)) 18. (MOVED FROM 11/11/97, RESCHEDULED FROM 1/27/98).

Chairman DiGiulian called the case and William E. Shoup, Deputy Zoning Administrator, Zoning Administration Division, gave a summary of staff's position as contained in the staff report. He said that the property was owned by the appellant, who also owns B & D Trucking Company which operates from the site, as well as selling top soil, sand, stone and gravel. Mr. Shoup said that the appellant also leases the property to 13 other companies. He referred to the staff report that provided history of the use of the property and the issues.

Mr. Shoup said that some of the businesses involve the parking of semi-trailers and tractor trailer trucks, which by definition, was a motor freight terminal and that use was only permitted in the I-4 through I-6 District and not the R-C District. He said some of the businesses involve the storage of dump trucks and other vehicles, some construction equipment, cargo containers for storage and storage of temporary seasonal sales stands such as fireworks stands and the storage of telecommunications equipment. Mr. Shoup said this activity was deemed to be a storage yard which was a use permitted in the I-5 and I-6 District and not the R-C District. He said the appellant was operating a sand mulch, gravel, and top soil sales operation which was considered a lumber yard and building materials yard to include rock, sand, and gravel. This use was only permitted in the I-5 and I-6 District and not the R-C District. Mr. Shoup said one business involved retail sales of storage sheds, gliders, children play equipment, and other wooden product which constitutes a retail sales establishment and this use was not permitted in the R-C District. He said the one concern noted in the Notice of Violation related to firework storage on site had been resolved. Mr. Shoup said the fact that these uses were being conducted on site was not in dispute; however, the appellant maintained that they were nonconforming uses and that was the issue before the Board today. He said based on a 1977 determination, there was a nonconforming right to park 19 trucks and 1 front-end loader on the property, but inspections revealed there were 40 trucks, 2 front-end loaders, and a backhoe being stored on the property. In addition, a large storage maintenance building had been added to the site since 1977, as well as an office trailer. It was the Zoning Administrator's position that these activities constituted an expansion of that nonconforming right.

Regarding the storage yard activity, Mr. Shoup said it appeared that this started in 1982. He said such storage yard use was not permitted on the property under any of the zoning districts that previously existed; therefore, it was the Zoning Administrator's belief that there was no nonconforming right to all of these storage yard activities that were being conducted. Regarding the sale of the mulch, sand, and gravel, it was indicated previously that this began in the early 1970s. Under the Zoning Ordinance provisions in effect at the time and the Zoning in effect at that time, such use could be conducted on the property provided that the

materials were kept entirely in a screened enclosure. This activity did not meet that criteria; it was totally open to view; therefore, the Zoning Administrator believed there was no nonconforming right to this activity.

Mr. Shoup said the retail sales of the sheds, play equipment, and other items were established sometime between April 1995, and November 1996, which was under the current Zoning Ordinance provisions which did not permit retail sales in the R-C District. Therefore, it was the Zoning Administrator's belief that there was no nonconforming right to that activity. He noted that the appellant had represented that this activity would be removed from the property soon.

Chairman DiGiulian said he has gone that area on a regular basis for several years and there had always been dump trucks and trailers parked on the Appellant's property. He wanted to know what the Zoning Administrator's opinion, if anything, was legal nonconforming use in that area.

Mr. Shoup said based on the 1977 determination, he believed they agreed that the appellants could park trucks there, but they were limited by that determination to a maximum of 19 trucks and 1 backhoe of which they had exceeded.

The appellant's agent, Randy Minchew, Hazel and Thomas, 44084 Riverside Parkway, Leesburg, Virginia, said the procedural elements of the public hearing had been met. He said the application was one that involved a microcosm of Fairfax zoning history and he believed it was impossible to look at a nonconforming use without getting into a bit of history. He said the appellant has owned the property since 1980, but had been an industrial user and renter on the property since the early 1970s. Mr. Minchew said the area on the viewgraph outlined in black was owned by Luck Stone Corporation and permitted for their Quarry. This area was within the natural resource overlay district.

Mr. Minchew said the property was currently zoned R-C. To the east of the property was the Tarmac Industrial operation which was a ready-mixed concrete facility zoned I-5 and I-6. On the south side there was large pipestem lot zoned I-6 that was owned by Luck Stone and leased out to Superior Paving and Cardinal Concrete. He said under the Comprehensive Plan, the appellant's property, the Tarmac property, and the area that was owned by Luck Stone and was rented out by Superior Paving and Cardinal were planned for industrial under the Comprehensive Plan. He said this was not directed to the zoning issues, but he pointed it out because the Comprehensive Plan recognized the appropriateness of industrial uses. Mr. Minchew said that in 1941 when Fairfax County first adopted a comprehensive zoning ordinance, the property was rezoned from a non-zoning state to agriculture. He said records showed that in 1938, there were trucks being stored on the property. Mr. Minchew said in 1950, the property was rezoned to rural business; in 1952, there was restaurant, gas station, and grocery establishments; in 1959, the property was rezoned from rural business to commercial general; in 1960, there was a storage of trucks that were documented into the County's files. He referred to a letter from Mr. Garret who stated that he was using the old cinder block building for a truck stop which was a truck maintenance use; in 1962, the Battlefield restaurant was destroyed by fire; after that time, the building had been used as a truck garage and storage facility; in 1964, part of the building was converted back to a gas station that was being operated until the 1970s; in 1970, Mr. Ruckert became the primary major tenant of the property. Mr Ruckert was served with a 1974 zoning violation.

Mr. Minchew stated that Mr. Ruckert did not own the property but he had a big operation. He said that at time, the property was owned by George Clay. He said when the zoning violation letter was sent out to Mr. Ruckert, it was sent to George Clay as well. He said in that same period, Mr. Blevins had some trucks there, Sergeant Blamer with Fairfax County Police Department had a lawn mower business there and Bud Bryant had four trucks, Alan Edward had four trucks, Danny Barrett had six or seven trucks and Louis Tyler had three trucks. Mr. Minchew said Mr. Ruckert, who was a major tenant with the biggest operation but was not the only tenant, received the violation letter and responded to it. That set the outside parameters of the nonconforming use with respect to Mr. Ruckert's operation which did not include the other trucks, which were not subject to that. Mr. Minchew said the 1994 Zoning Administrator's ruling, which gave rise to the 1997 determination, set the outside parameters of the nonconforming use with respect to Mr. Ruckert's operations which was not the only existing on the property. Mr. Minchew stated that in the 1970s, Mr. Blevins took over all the industrial operations and bought the property in 1981 from Mr. Clay and was now the only owner. He said that in 1971, the property had gone through the zoning changes from C-G to C-N; in 1978, the property became C-5 and then on July 26, 1982, the property was down zoned to R-C. Mr. Minchew said any of these zones which allowed a certain use to begin, and that use began, set a

nonconforming use. He said there was a cascading series of nonconforming uses. Each one of these uses, if kept active for the required period, was still legitimate today. Mr. Minchew said that the 1977 letter set the outside parameter for Mr. Ruckert's operation and that there were a total of 35 trucks stored on the property.

Mr. Minchew said in regard to the fireworks storage, there were large cargo trucks with the word fireworks on them, but there never was fireworks stored on the property. He said these were sheds used during the July 4th fireworks season. As for the retail sales of garden sheds, Mr. Minchew stated that there was no authorization for this in the Zoning Ordinance, and they had hoped to have it out by the weekend but the owner had a medical problem that prohibited that. He said 85 percent of these were removed and the remaining 15 percent will be removed within a week. With regard to the mulch and gravel sales facility, Mr. Minchew stated that this began by Mr. Blevins in 1970 when the property was zoned C-G and it appeared that the only use that gave rise to whether or not that was a nonconforming use, was not whether it was established in 1970, or if the use was kept current, but whether there was a required screened enclosure in 1970. He said it was his understanding that there was never a screening enclosure, but it was apparently required by the Ordinance; it was never done. He said if there was a need to cure that by putting up a screened enclosure, the appellant would be glad to do it. Mr. Minchew said the use was established in 1970 and the issue about the sale of gravel was not noted until the most recent Zoning Administrator's letter; the 1970 letter mainly addressed the truck uses. As for the office trailer, Mr. Minchew stated that it was placed there in 1981 when the property was zoned C-5. He said the reason it was brought in was because the old cinder block building that was originally the restaurant and gas station was damaged in the fire. He said it had gotten to the point where it was not safe for use as an office. The appellant brought a trailer from Tyson's corner in 1981, established it, got a certificate of occupancy, but did not get a building permit, and have kept it up to date.

In summary, Mr. Minchew said the fireworks storage was non-existent, retail sale of garden sheds should not have been established and will be gone within a week's time, the office trailer was put in when the property was zoned C-5, and the mulch sales and gravel facility was established when the property was C-G zoned. He said there was an I-6 rezoning application on file which was scheduled to go before the Planning Commission on May 20, 1998, then to the Board of Supervisors. He said the I-6 uses would be restricted to the four uses that are legal under I-6 existing intensity levels; all other uses were being proffered out. Mr. Minchew said the motor vehicle freight terminal, as it exists today, the office trailer use, the mulch, sand and gravel which qualified as a building material sales facility, and the storage yard use, would not be expanded. He said it was the intent of the appellant to have the four uses at its existing intensity levels locked in by proffers.

Mr. Ribble said a decision was expected from the Planning Commission on April 7, 1998. He wanted to know what was the reason for this decision and Mr. Minchew stated that the appellant filed new proffers and a new plan. Mr. Minchew said that on March 16, 1998, a comprehensive site plan was done and photographs were taken specifying exactly what was there.

Mr. Pammel said this was an interesting case that was very involved. He said he noticed that the usage of the land was going in one direction and the zoning has been going in the opposite direction. He said that when the land was zoned C-G, the usage at that time would have been in conformance with the Ordinance, then on the Board's own motion, rezoned it to C-N. Mr. Pammel asked if there was a stated opposition from the owner of the land when the land was down zoned.

Mr. Minchew said it was his understanding that the owner did not know about it. He said when a Board zoned motion zoning was done, no certified letters were sent out or posters placed on the property. Mr. Minchew said the Occoquan Basin was down zoned on July 26, 1982, and about 90 percent of the people were informed of this. Mr. Blevins did not know that his property was being down zoned from C-5 to R-C until several years later.

Mr. Pammel wanted to know if the oversight had been corrected by recent legislation which stated that, if the County were to do something like that, the affected individual would be notified. Mr. Minchew said it was his understanding that if the County did a comprehensive rezoning or down zoning of more than 500 parcels, there was no requirement for the County to send out letters. He said the only requirement was for advertisement to be done in the newspaper. Mr. Minchew said he did not believe, to the best of his knowledge, that current laws had any requirement for the County to send out letters when they do a large

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comprehensive County-wide or regional down zoning or up zoning. Mr. Pammel asked if it would have applied with the C-N since it was an isolated action. Mr. Minchew said that the C-N was a Board zoned motion and the C-N down zoning from C-G occurred in 1973, before Mr. Blevins bought the property even though he was a tenant. He said it was not an applicant sponsored zoning but a Board motion.

Mr. Pammel commented that Mr. Blevins was a victim of circumstances he was not aware of and Mr. Minchew agreed.

Mr. Dively asked if there was a request last week to continue this matter. Mr. Minchew said he sent a letter requesting a deferral but staff could not support the administrative deferral.

Mr. Dively asked Mr. Shoup why the case was not being deferred. Mr. Shoup said there was some concerns about how long it took to get to that point, also about the rezoning and the likelihood for approval in the near future. Mr. Dively asked what was the time frame for the rezoning. Mr. Minchew said he anticipated the Planning Commission's action on the evening of May 20, 1998, then Board of Supervisors's public hearing would be scheduled. He said that action could be anticipated in June 1998.

There were no speakers in support or in opposition.

Mr. Dively made a motion to continue the hearing to July 7, 1998, at 9:30 a.m. for decision only, with each side having five minutes to summarize. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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9:30 A.M. KARHARIAS, INC., T/A THE SHARK CLUB BILLIARDS AND CAFÉSHARK CLUB, A 1998-SU-001 Appl. under Sect(s). 18-301 of the Zoning DLV Ordinance. Determination that an enclosed seating area addition, an enclosed staircase addition, two walk-in refrigeration units and to an expansion of the loading dock have been constructed or installed in violation of approved Special Permit SP 95-Y-069 and without site plan or proper Building Permit approval. Located at 14114 and 14116 Lee Hwy. on approx. 406,184 sq. ft. of land zoned C-7, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman DiGiulian called the case and stated that the Board issued an intent to defer to July 14, 1998, at 9:30 a.m. Mr. Ribble made a motion to accept the deferral date as noted. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Out-of-Turn Hearing Request
Robert D. & Judy A. Bassetti, VC 98-H-038

Mr. Dively wanted to know what was the earliest date this case could be scheduled. Staff said the case was currently scheduled for June 30, 1998, and the agenda for June was full for dates previous to this. Staff said the only date was May 26, 1998, which was the day after Memorial Day. Mr. Dively said May 26, 1998, was acceptable and made a motion to accept May 26, 1998, at 9:00 a.m. as the new scheduled hearing date. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Approval of April 7, 1998, Resolutions

Mr. Pammel made a motion to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 429, April 7, 1998 (Tape 1), After Agenda Item:

Letter from Mark C. Haynes, Agent for Appellants,
A 1997-MA-042, Margaret Quadrino, et al, dated April 3, 1998.

Mr. Kelley said he read the letter from Mr. Hanes who was not present before the Board today. He said he did not believe there was anything for the Board to hear on April 14, 1998. Mr. Kelley said that in light of what happened during the past few weeks, there was no issue to discuss. He said Mr. Hanes raised some interesting points, but that was why there are the courts.

Chairman DiGiulian said he agreed with Mr. Kelley. He said he believed that when a decision to uphold the Zoning Administrator was made, it was consistent with the County Zoning Ordinance and the Board of Zoning Appeal's (BZAs) bylaws. He said he did not see where the Board would have any grounds to reconsider even at this date. Otherwise, the Board would have cases where decisions could never be reached.

Mr. Kelley said he agreed. He said he believed there might be some confusion over the terms "applicant" and "appellant."

Mr. Dively said the courts were there for this. Mr. Kelley said he agreed with Mr. Dively.

Chairman DiGiulian said that the next meeting was only three days away which was the time the appellants had before filing an appeal in the Circuit Court.

Mr. Kelley asked staff to notify the appellants and their agent of the Board's action, this way they would not show up at the next hearing and the Board would have no case for them to hear. Mr. Pammel said this issue should be decided by the court.

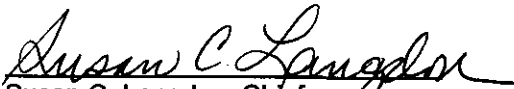
There was no other discussion and Chairman DiGiulian closed the discussion.

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As there was no other business to come before the Board, the meeting was adjourned at 10:44 a.m.

Minutes by: Ann-Marie Wellington

Approved on: September 15, 1998



Susan C. Langdon, Chief
Special Permit and Variance Branch



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, April 14, 1998. The following Board Members were present: Chairman John DiGiulian; 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.

Page 431, April 14, 1998, (Tape 1), Scheduled Concurrent cases:

9:00 A.M. STEVEN A. DARRAGH, SP 98-B-003 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 15.4 ft. from rear lot line and shed to remain 1.7 ft. from side and rear lot lines. Located at 4900 North Centaurs Ct. on approx. 13,918 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((5)) 222A. (Concurrent with VC 98-B-017). (OUT OF TURN HEARING GRANTED).

9:00 A.M. STEVEN A. DARRAGH, VC 98-B-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 4900 North Centaurs Ct. on approx. 13,918 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((5)) 222A. (Concurrent with SP 98-B-003). (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. Steven A. Darragh, 4900 North Centaurs Court, Annandale, replied that it was.

Jennifer Smolko, Planning Intern with the Special Permit and Variance Branch, made staff's presentation, as contained in the staff report dated April 7, 1998.

Steven Darragh, proceeded with his justification for the requested variances, explaining that he bought the house in 1991 and that both the screened porch and shed were already there. He said he spoke with his neighbors and none of whom had any problem with his request. Mr. Darragh stated that the screened in porch was simply to be enclosed and have a few windows. He clarified that there would be no expansion or encroachment.

Chairman DiGiulian called for speakers either in support or in opposition to the application and receiving no response, closed the public hearing.

Indicating that he would take action on the special permit application first, Mr. Hammack moved to approve SP 98-B-003 for the reasons set forth in the Resolution, subject to the Proposed Development Condition contained in Appendix 1 of the staff report dated April 7, 1998, with an additional Development Condition, #2, stipulating care and maintenance of the shed.

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

STEVEN A. DARRAGH, SP 98-B-003 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 15.4 ft. from rear lot line and shed to remain 1.7 ft. from side and rear lot lines. Located at 4900 North Centaurs Ct. on approx. 13,918 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((5)) 222A. (Concurrent with VC 98-B-017). (OUT OF TURN HEARING GRANTED).

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 1998;

and

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

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

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

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

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

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

- 1. This Special Permit is approved for the location of a dwelling and shed shown on the plat prepared by Harold A. Logan, dated January 7, 1998 submitted with this application and is not transferable to other land.
- 2. The shed shall be painted, maintained, and kept 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. Pammel seconded the motion which carried by a unanimous vote of 5-0 with Mr. Dively not present for the vote.

The Board waived the 8-day waiting period.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack then moved on the variance application.

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

STEVEN A. DARRAGH, VC 98-B-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 4900 North Centaurs Ct. on approx. 13,918 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((5)) 222A. (Concurrent with SP 98-B-003).

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 1998; and

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

1. The applicant is the owner of the land.
2. The lot has an irregular shape.
3. The porch was pre-existing and having it enclosed requires a minimal variance at the corner of the 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the room addition (enclosed screen porch) shown on the plat prepared by Harold A. Logan, dated January 7, 1998, 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 addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Dively abstaining.

The Board waived the 8-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BRENDA LUWIS, BRIAN LUWIS & SATYENDRA SHRIVASTAVA, VC 98-D-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and an outlot, proposed lots 7, 8 and 12 having a lot width of 5.33 ft. Located at 962 Towlston Rd. on approx. 5.29 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 12 pt and 19-2 ((4)) B.

Chairman DiGiulian announced that the Board received information that this application's notices were not in order.

Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that, after sending out their notices, the applicants had revised the application to add additional land area. She noted that staff had not received certified revised plats depicting the addition and, therefore, staff recommended a deferral date to May 19, 1998.

There being no objection, Mr. Ribble moved to defer the application, VC 98-D-008, to May 19, 1998, at 9:00 a.m.

Mr. Hammack seconded the motion which carried unanimously by a 6-0 vote.

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Request for Out-of-Turn Hearing for Eric J. Candelori, VC 98-P-042

Susan Langdon, Chief, Special Permit and Variance Branch, stated that this request for a variance was for a subdivision whose public hearing was currently scheduled for June 30, 1998.

Discussion followed among Board members and Ms. Langdon concerning an appropriate date to reschedule the application.

Mr. Pammel noted that the application involved a right-of-way to be incorporated into the request.

Ms. Langdon further explained the application.

Mr. Kelley moved to hear VC 98-P-042 to May 26, 1998, at 9:00 a.m. The motion was seconded by both Mr. Pammel and Mr. Dively and carried unanimously by a 6-0 vote.

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Page 435, April 14, 1998, (Tape 1), Action Item:

Request for Out-of-Turn Hearing for Shepherd Gate Church, SPA 97-Y-012

Chairman DiGiulian announced that this application was simply a Change of Permittee which was concurred with by Ms. Langdon.

Mr. Pammel then moved to hear SPA 97-Y-012 on May 26, 1998, at 9:00 a.m. Mr. Dively seconded the motion which carried unanimously by a 6-0 vote.

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Page 435, April 14, 1998, (Tape 1), Action Item:

Approval of April 7, 1998 Resolutions

There being no objection, Mr. Pammel moved to approve the April 7, 1998, Resolutions. The motion was seconded by Mr. Hammack and carried unanimously by a 6-0 vote.

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As there was no other business to come before the Board, the meeting was adjourned at 9:15 a.m.

Minutes by: Paula McFarland

Approved on: July 7, 1998

Susan C. Langdon, Chief
Special Permit & Variance Branch, BZA

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 21, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 8:03 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 437, April 21, 1998, (Tape 1), Scheduled case of:

8:00 P.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, Appeal A 96-P-049 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10-28-97.

William Shoup, Deputy Zoning Administrator, indicated that the appellant was requesting a deferral. He said the appellant's agent was present to speak to the deferral request.

Grayson Hanes approached the podium and stated that at the previous Board of Zoning Appeals (BZA) hearing pertaining to the subject application, a decision was made to reconsider the prior vote. He said the BZA had determined they could modify the Zoning Administrator's decision and did so by suggesting various changes that would regulate this particular use. Mr. Hanes said the Board of Supervisors sent a letter disagreeing with whether or not the BZA had the authority to render such a decision through its modification abilities. Mr. Hanes stated that both he and the Assistant County Attorney had filed memoranda to the BZA. Mr. Hanes stated that his memorandum was in response to the Assistant County Attorney's memorandum and both contended that there was not case law either way to determine what the statute meant. Mr. Hanes said he believed that the BZA did have the authority to render their previous decision. He stated that at the previous hearing, Mr. Kelley stated in his motion that it would behoove the appellant to apply for a special exception. Mr. Hanes said one of the problems with the special exception process was the fact that the appellant did not meet the requisite 5 acres that was required for a special exception for a nursery. Mr. Hanes said the BZA then made a motion to recommend to the Board of Supervisors (BOS) that they waive that requirement. Mr. Hanes said at that time the Zoning Administrator was asked if the BOS would commit to waiving the requirement and found that the Zoning Administrator could not guarantee that would happen.

Mr. Hanes stated that since the hearing in October, the appellants had met with members of the Mantua Homeowners' Association. Mr. Hanes said the appellants sent a flyer to 150 households in the Chesterfield Mews Citizens Association subdivision requesting a meeting with the appellants. He said they sent a letter back saying that the community was split on the issue.

Mr. Hanes said that in order to assess the probability of success before the BZA as well as predict what might happen with the special exception, a request was made to the zoning office to review various files. He said that request was denied because of the possibility of an ongoing criminal prosecution relating to zoning violations. Mr. Hanes stated that the statute of one year for that misdemeanor had expired, but the appellants were denied access to the files. Mr. Hanes explained that the appellants requested that a number of files be produced and was told the cost would be about \$28,000. He said there hadn't been a great deal of cooperation from staff. Mr. Hanes said the appellants and supporters of the appellants met with Supervisor Connolly on April 20, 1998 to discuss applying for a special exception. Mr. Hanes said his understanding was that Supervisor Connolly encouraged the appellants to file for a special exception, and committed that he could get the Board of Supervisors to waive the 5 acre requirement and that Supervisor Connolly would personally host a meeting between the Chesterfield Mews Citizens Association and the appellants, once the special exception application was accepted. Mr. Hanes said based on the meeting with Supervisor Connolly that the appellants would file for a special exception and hopefully the issue would be resolved. Mr. Hanes said by taking this approach, he wanted to state for the record, that appellants maintained their position and in the event that the special exception process was not fruitful, he believed

that the appellants would still maintain their rights and could prevail before the Board of Zoning Appeals. Mr. Hanes said the appellants would file the special exception application within 30 days and asked that the BZA defer the subject application to allow the appellants to file for a special exception.

Mr. Hammack asked how long it would take for the special exception application to be filed and accepted. Mr. Hanes replied that the difficult part was sending it to the County and getting it accepted, but that he would suggest 30 days for acceptance and then six months before the application would be heard by the Board of Supervisors.

Mr. Hammack asked staff to also respond to that question. Mr. Shoup replied that there was a backlog of cases as far as acceptance was concerned and that 30 days was a fair assessment of time for acceptance. He said a hearing date around an October time frame would seem sufficient.

Mr. Ribble moved to defer Appeal A 96-P-049 to October 20, 1998. Mr. Hammack seconded the motion which carried by a vote of 6-0.

Mr. Kelley asked staff to provide a memorandum to the BZA explaining how staff arrived at a cost of \$28,000 to reproduce certain records and what were the expenses.

Mr. Shoup responded stating that staff could request payment for the time it would take to research files and for copying files on a Freedom of Information Act request. He said the nature of the appellants' request was so all encompassing that it would have required staff to look through 18,000 street files. He added that once the required time to do that was calculated and a technician to pull those files, it would amount to \$28,000. Mr. Shoup said the appellant was told that if he could be more specific, that staff would do whatever they could to accommodate him and it was his understanding that the appellant did meet with staff and gave some specific sites and staff pulled the files for him that day and he was able to see the files. Mr. Shoup said the appellant's request was for complete access and copies as needed to all nurseries in Fairfax County that have been in Fairfax County in the last 70 years and complete files especially violations and violation notices. He said that staff does not have a database or ready knowledge of what has been in the County for 70 years, so staff would have had to review approximately 18,000 files.

Mr. Kelley stated that his question had been answered.

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Page 438, April 21, 1998, (Tape 1), Action Item:

Request for Intent to Defer
Woodlawn Kennel, A 1998-LE-002

William Shoup, Deputy Zoning Administrator, stated that the Intent to Defer was requested because the applicant's agent wanted to meet with a consultant to review some aerial photographs, but was having difficulties contacting them. Mr. Shoup said staff did not object to a deferral and recommended a date of July 28, 1998. Mr. Hammack moved to approve the Intent to Defer for July 28, 1998. Mr. Ribble seconded the motion which carried by a vote of 6-0.

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As there was no other business to come before the Board, the meeting was adjourned at 8:22 p.m.

Minutes by: Regina Thorn

Approved on: May 12, 1998

Regina Thon

Regina Thon, Clerk
Board of Zoning Appeals

John P Di Giulian

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 28, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:10 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 441, April 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ROGER Q.P. TARRANT & JANE M. DANAHER, SP 98-Y-001 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 10508 Wickens Rd. on approx. 2.04 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((16)) 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. Erica Byrd Johnson, Agent, 6045 Wilson Blvd., Suite 100, Arlington, Virginia, replied that it was.

Jennifer Smolko, Intern, made staff's presentation as outlined in the staff report. The applicant requested a special permit to allow an accessory dwelling unit within a single family detached dwelling. The dwelling would contain two bedrooms and it would be approximately 1078 square feet in size or 20 percent of the total gross floor area of the principle dwelling unit. Four parking spaces would be provided for the unit within an existing two-car garage and asphalt driveway. There would be no new construction. Staff indicated that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the proposed development conditions contained in Appendix 1 of the staff report. Staff recommended approval of the application subject to the development conditions.

Staff noted that subsequent to the publication of the staff report, they were made aware of an October 22, 1997, Notice of Violation issued to the applicant for having a second dwelling unit consisting of two bedrooms, a bathroom, kitchen and living room. The applicants were also allowing a family of three, not related to them, to reside in the second unit.

Erica Byrd Johnson, Agent, stated that the lot is over two acres in size. The lot exceeds all setback, area and yard requirements in the R-E district. No new construction was proposed. She stated that the application conformed to the Comprehensive Plan. She also stated that the application promoted County-wide objectives which addressed creating economically balanced communities and affordable housing.

The surrounding property owners, according to Ms. Johnson, would not be adversely impacted by the proposal. Ms. Johnson stated that the Zoning Ordinance permitted the accessory dwelling unit to exist in a separate free-standing structure. If the application was approved, it would allow the accessory dwelling unit to be created out of the existing home by allowing a second kitchen with a stove to exist in the unit and it would also allow access between the principle and accessory units to be obstructed. The accessory unit would be occupied by no more than two persons. There would be ample parking because the home had a two-car garage and off-street parking. A wooded lot screens the property from view.

Ms. Johnson addressed staff's comments about the zoning violation issued on October 22, 1997. She indicated that when the applicant was notified of the violation, an application was immediately filed and the lease with the tenants occupying the dwelling ended. All efforts had been made by the applicant to come into compliance with the Ordinance.

Mr. Hammack asked Ms. Johnson about the complaint filed regarding 13 cars, a boat and a pickup truck parked on the property at various locations. Mr. Hammack also wanted to know if the applicant was in compliance with the Ordinance at the time they were cited with the violation. Ms. Johnson stated that the applicant was unaware of any instance where there had been 13 cars parked on the property at one time. Ms. Johnson stated that at that time, the applicant had rented the space to two person who had since had a baby, thus the three occupants. Since that time, the applicants terminated the lease for those tenants. Staff indicated that the extra kitchen in the dwelling was put in place by the prior owner without a permit. The applicant would not have been in compliance with the Ordinance because there were three persons living in the dwelling.

Mr. Hammack wanted to know if there was a building permit issued for the installation of the second kitchen. Staff replied that no permit was filed.

There were no speakers in support of the application.

Mark and Ellen Narassi, an adjoining neighbor, spoke in opposition to the application. Mrs. Narassi spoke of numerous cars, a boat and a truck being parked on the applicants' property. She indicated that the parking was unsightly and that it had deteriorated the value of properties in the neighborhood. Mrs. Narassi stated that the deed of dedication provided that there be no apartments of any type located on the land. Therefore the proposed use by the applicant was prohibited. The neighborhood was a quiet residential area and she stated that they wanted it to remain that way. She mentioned that the property was not being properly maintained. The Narassi's requested that the Board deny the application.

Dan Krevere of 10515 Wickens Road, Vienna, Virginia, read into the record a letter from Jim and Sarah Wells who wrote in opposition to the application. The Wells' opposed the application because they stated that the second dwelling was built to house elderly parents of the original owners. The letter stated that the current owners were now using the second dwelling to bring in a source of income. The Wells stated in their letter that they felt that the applicants were prohibiting the quiet enjoyment of the surrounding properties.

Dan Kevere, 10515 Wickens Road, Vienna, Virginia, spoke in opposition to the application. Mr. Kevere stated that the application would change the nature and character of the surrounding neighborhood. He stated that he had lived in the neighborhood for 21 years. He mentioned the number of cars that were sometimes parked on the applicant's property which he considered to be a disruption. He did say that there were other renters in the neighborhood that may have been reluctant to come before the Board to express concern and that even though there were other renters, they were not a concern to other neighbors. He stated that the applicants' proposal would have a negative impact on density, traffic, and schools.

Mr. Pammel asked if there were other dwellings within the neighborhood that rented apartments within the dwelling units. Mr. Kevere stated that there were houses with rental units within the housing but that they did not disrupt the community. Mr. Dively wanted to know if those other rentals were reported to Zoning Administration as well. Mr. Kevere stated that they had not been reported. Mr. Hammack asked if Mr. Kevere had seen the cars parked on the applicants' property. Mr. Kevere stated that there were a lot of trees, so it was difficult to see the back of the property. He did say that he could see the boat on the front lawn.

Carl Carter, President of the Hunter's Valley Association, spoke neither in support or in opposition to the application. He stated that the Association's Board met to discuss the application and was very concerned about the precedent that would be set if the application were granted. He stated that the ramifications would affect the community both personally and financially.

Lewis Michaels, 10512 Wickens Road, Vienna, Virginia, spoke in opposition to the application. His property adjoins the Tarrant and Danaher property. His concern was the precedent that the proposal would set. He stated that he felt that it would be detrimental to the community and would change the character of the neighborhood.

Ms. Johnson, in her rebuttal, stated that the applicant would be willing to apply for any required permits. She submitted several letters of support to the Board for the record. She also submitted for the record a copy of the restricted covenants which contemplate two units per lot. She went on to define the differences between an apartment and an accessory dwelling unit. She stated that the Board of Supervisors had determined that they would adopt Sect. 9 to the Ordinance which stated that having an accessory dwelling unit would be an appropriate use in this particular zoning as long as certain criteria were met. Ms. Johnson indicated that all criteria had been met by the applicant.

Ms. Johnson stated that the reason the applicant was before the Board was to have a stove in the second kitchen and to block access between the two units. She indicated that it would have been legal for the applicant to have renters without making those changes.

Mr. Pammel wanted to know what the assurances would be that the applicant would follow the additional standards that relate to the elderly and disabled. Ms. Johnson indicated that the Ordinance required that one of the two units be occupied by the owner and by residents over 55 or disabled. She stated that the owners were over 55 and that they would be residing in the principle dwelling unit. Mr. Pammel asked if they would then be able to rent to anyone, in which Ms. Johnson replied that they would be able to rent to two individuals.

Mr. Dively asked what the applicants have to do to make the use a "by-right" use. Ms. Johnson stated that they would have to remove the stove from the second kitchen and to make sure that there was free access between the two units.

Mr. Pammel asked staff what the County's regulations were with respect to where vehicles could be parked on a lot. Staff indicated that as long as the cars were owned by the resident, there were no restrictions. Mr. Tarrant, the applicant, addressed the Board with regard to the number of vehicles parked on his property. He stated that the tar sealed area next to his garage could accommodate four cars. He stated that there had never been 13 cars on his property at one time. He also stated that the boat in question had been moved to the rear of the house. Mr. Tarrant stated that his neighbor, Mr. Matthews, had his boat and pickup truck parked beside the pipestem directly opposite his house. Ms. Johnson stated that the concerns from the neighbors were recent concerns and that they would be happy to address them. Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve SP 98-Y-001, stating that he thought that it was a close case, in that the proposal should be in harmony with the surrounding neighborhood. He stated that the lots were large and that he felt it would be hard to find an Affordable Dwelling Unit (ADU) that would have a detrimental effect on the surrounding neighborhood. He also stated that County policy encouraged ADUs. He suggested that a ninth Development Condition be added indicating that the development conditions be recorded in the land records to eliminate any questions regarding whether the conditions could be transferred to any future purchasers of the property without prior approval of the Board. Mr. Hammack also stated that the application should not be approved until the applicant had gotten all inspections completed for electrical work and that he had met all Code requirements

The motion failed for lack of a second.

Mr. Dively made a motion to deny SP 98-Y-001 for the reasons stated in the Resolution.

Mr. Pammel concurred with Mr. Hammack stating that it was a close case. He stated that he was a resident of the area and was very familiar with it. He stated that while he was not opposed to ADUs, there was a time, place, and location for such units and that he felt that the accessory dwelling in question was not the place. He voiced concern that things were done illegally. He noted that the Board had several situations where things were done illegally by previous owners, and then new owners would then have to ask the Board to try to correct them, which is not a function of the Board.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER Q.P. TARRANT & JANE M. DANAHER, SP 98-Y-001 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 10508 Wickens Rd. on approx. 2.04 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((16))5. 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 28, 1998; and

WHEREAS, the Board has made the following findings of fact

- 1. The testimony and evidence was sufficient to show that the proposal is not in harmony with the surrounding community and 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 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 **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 5-1. Mr. Hammack voted nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 6, 1998.

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Page 444, April 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-6 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to permit building additions, site modifications, increase in land area, and modifications to development conditions. Located at 9901 Beach Mill Rd. on approx. 175.80 ac. of land zoned R-E. Dranesville District. Tax Map 8-1 ((1)) 22, 23, 41; 8-3 ((1)) 4; 7-2 ((1)) 21 pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kennon W. Bryan, Agent, 4117 Chain Bridge Road, Suite 420, Fairfax, Virginia, replied that it was.

Mr. Bryan stated that he needed to add four names as stockholders of William H. Gordon, Inc. He stated that those names were supposed to be substituted for the names that were listed in the staff report. Staff indicated that they did not receive the revised affidavit. Mr. Bryan stated that it was delivered at the same time that he delivered the revised plats in January. Mr. Bryan submitted the names for the record.

Julie Schilling, Staff Coordinator, made staff's presentation as outlined in the staff report. The applicant requested the addition of 24.5 acres to the site, making the golf and country club 175.8 acres. Site modifications and building additions were proposed which would include the relocation of the driving range to the expansion area and the construction of 20 open tee boxes, ten closed tee boxes, an operations building, an alternate access drive extending from Walker Road, relocation of the swimming pool and construction of a two-story bathhouse, pool house and two-story pool house grill, indoor/outdoor tennis courts, outdoor volleyball courts, out door basketball courts and increase in parking on site from 150 spaces to 289 spaces.

The applicant proposed to adjust the hours of operation to allow opening at 7:00 a.m. instead of 11:00 a.m. There would be no changes in membership. Staff stated that the changes were in harmony with the Comprehensive Plan but that there were significant design and compatibility issues posed by the development plan. The plan proposes to place a swimming pool, pool buildings, basketball courts, volleyball courts, and overflow parking relatively close to adjacent residential lots. This would impact residents with increased noise and light. Staff felt that there were alternate locations that would be further away from residents.

Staff recommended approval of the increased land area, the construction of the driving range and the modification of the hours of operation subject to the Development Conditions contained in Appendix 1 of the staff report. However, staff recommended denial of all site modifications east of the proposed driving range.

Mr. Ribble asked staff to indicate where the alternate locations would be. Staff indicated to the Board the alternate locations and explained that alternate locations would create a greater distance from residents.

Mr. Kelley asked staff if they were applying different standards to the club than they would apply to community swimming pools and churches. Staff replied by saying that there were no separate standards but that staff had to consider the impact on the surrounding residents and neighborhood. Mr. Ribble stated that the applicant indicated that they would place a brick wall around the pool and additional shrubbery around the parking lot area. Staff replied that the applicant did indicate that they would place a wall around the pool and basketball court and that the overflow parking lot would be 129 feet from residents on the north side. Staff also stated that the applicant planned to place lights on light standards approximately 20 feet in height which would be directed on site. In addition, staff was concerned that the wall would cause an echo effect.

Kennon Bryan, Agent for the applicant, stated that the main objective of the applicant was to add 24 and one-half acres to eliminate driving range problems. The applicant also wanted to relocate the pool and add overflow parking. Mr. Bryan stated that staff recommended approval of the application but at the eleventh hour, staff changed their recommendation.

Mr. Bryan stated that the proposed location for the changes was the only location in which the changes could be made. All other areas were a part of the golf course. The new pool would be the same size as the original pool. The only difference would be that the applicant planned to add another lane. Mr. Bryan stated that he believed that the site plan was in error because it indicated 150 parking spaces as opposed to the 163 spaces currently on site. He stated that the club had certain functions where they did not have adequate parking, therefore the need for overflow parking.

Mr. Bryan addressed the noise issue stating that the residents were already hearing noise from the swimming pool because it was not well screened. The applicant indicated that they were planning to have acoustical engineers come in during the designing of the pool house to lessen the noise. The relocation of the swimming pool would also eliminate a safety problem for children crossing the driveway. The applicant would be willing to put in as much screening as possible. Lighting would be adjusted so that the lights would be focused on site and would be set on timers and used only as needed.

Mr. Bryan said that parking was significantly further away from residents than the parking arrangements at the Great Falls Swim and Tennis Club whose application was recently approved by the Board six months ago.

The applicant also planned to construct an access road. Mr. Bryan felt that the applicant would have met all requirements of the Virginia Department of Transportation by site plan approval.

Mr. Bryan stated that he met with the residents and that the applicant made several concessions to accommodate them. These concessions included such things as moving the road that was close to the Brar House 90-140 feet away. They turned the parking to face in the opposite direction and it would also be turned 90 degrees. They moved parking more than 50 feet from Mr. Brar's property line and 129 feet from the Fife property line. They have reduced parking spaces from 107 to 79 and also proposed an eight foot masonry wall. Mr. Bryan indicated that all changes were made to address the concerns of the neighbors.

Mr. Kelley wanted to know if there had been any Notices of Violation issued to which Mr. Bryan replied that there were none. However, staff noted that application S 82-D-101 spoke of permitting existing conditions to remain which indicated that additions were made to the club that were outside of the special permit. The applicants then came back and brought the changes under the special permit. Mr. Kelley asked staff if the applicants were cited. Staff replied that they were not aware of them being sited.

Mr. Bryan reiterated the fact that staff changed their minds about approving the application. Mr. Pammel stated that it was staff's right to change their recommendation particularly when evidence raised concerns. He further stated that staff went on exercising their responsibility to the Board in evaluating what came before them.

Mr. Pammel stated that according to Mr. Bryan, the proposed improvements were necessary for the club. Mr. Pammel indicated that they were major expansions. Mr. Bryan explained that they wanted a decent facility for the guards and staff, locker rooms, decent showers and bathing facilities. They also wanted to have storage facilities.

Mr. Ribble wanted to know if the applicant was going to make any changes to the development conditions. Mr. Bryan stated that there would be a few which included: eliminating the last sentence of Paragraph 2; amending Paragraph 5 to indicate that the structure housing the exercise facility would operate from 6:00 a.m. to 11:00 p.m.; amending Paragraph 7 from 160 parking spaces to 299 spaces; Paragraph 14, second subparagraph that stated "the combined height of the light standards and fixtures for the swimming pool..." to add, "and parking lots" shall not exceed 14 feet in height."

There was a discussion between the Board and staff regarding the change in their recommendation. Staff stated that they made the applicant aware of their concerns regarding the buffer area between overflow parking lots and the swimming areas and the surrounding residences during prestaffing. The applicant then returned a revised plat which showed an increase in the buffer area. Staff indicated that they faxed a copy of the draft development condition to the applicant and when staff recommendation changed, staff stated that they immediately notified the applicant.

There were no speakers in support of the application.

John Ulfelder, 9151 Old Dominion Drive, McLean, Virginia, represented the Great Falls Citizen's Association. He spoke in opposition to the application. The club and the association met to discuss the plans of the club and to address citizen concerns. After several meetings, the club indicated that they would work on modifying the proposal in order to address the concerns of the neighbors. In spite of the discussions between both groups, the neighbors still expressed serious concern regarding the proposal. The association voted unanimously to recommend that the Board deny the special permit stating that the proposal was not in accordance with land use recommendations in the Comprehensive Plan.

Romeda Milliken, 354 Walker Road, Great Falls, Virginia, spoke in opposition to the application. She drew attention to the proposed access road from Walker Road. She stated that Walker Road was one of four roads that accessed 40 square miles of Great Falls. She was concerned about what would happen to the deer in the area once the access road was built. Ms. Milliken stated that she lived in a very old home. Her entertaining is done on her front porch. She stated that the applicant's proposal would greatly impact the quiet enjoyment and value of her property. She also voiced concern that the shower and weight room would become a commercial activity.

Chet Martling, 9813 Beach Mill Road, Great Falls, Virginia, spoke in opposition to the application. Mr. Martling stated that he was a member of the Riverbend Country Club and had been a neighbor for 13 years. He objected to the swimming pool, volleyball courts, basketball courts and parking lots being located adjacent to his property. He stated that the applicant's proposal was not in harmony with the neighborhood and would have a significant impact.

Joan and Scott Fife, 9817 Beach Mill Road, Great Falls, Virginia, spoke in opposition to the application. She stated that her house was the first house off the entrance road to the club. They claimed that they could see the glow from the parking lights and that the applicant's proposal would cause the glow from the lights to be much closer to their property. Joan Martling stated that was not a concern. The concern was the fact that the new development would place parking as close as her mailbox. The peacefulness and rural character of the neighborhood would be impacted by the proposal. They stated that the proposed 8 foot wall would not buffer the noise from the swimming pool.

Clarence and Clara Sue Ashley, 9809 Beach Mill Road, Great Falls, Virginia, spoke in opposition to the

application. Ms. Ashley stated that the applicant has had total disregard to the surrounding neighbors. She stated that she would be impacted by noise, lighting, and the pool.

Mr. Ashley joined Riverbend Country Club 20 years ago. He had been a member of several committees at Riverbend. He also stated that he played a role in acquiring the 30 acres of the Harrison property. He has since withdrawn membership at Riverbend but still had many friends there. His concerns centered around the noise from the existing swimming pool, the parties, the car doors slamming and the golfers all of which has progressively increased. Mr. Ashley respectfully urged the Board to deny the application until the applicant agreed to place the pool in a location that would not jeopardize the tranquility of the neighborhood.

Anna and Robert Krell, 9805 Beach Mill Road, Great Falls, Virginia, spoke in opposition to the application. Noise was a major concern for Mr. Krell. He stated that the pool would be too close and unsheltered which would have a significant impact. He stated that during a walk through with the club owners on his property, they were able to hear the noise from the tennis players. The new proposal would cause an increase in noise. When Mr. Krell asked the club owners if they would be able to expand the pool where it stood, they replied that it would be too much noise for the golfers. Mr. Krell noted that the club owned 40 acres and sold 8 acres in order to finance their proposal. Mr. Krell noted that he expected staff to research all possible avenues in order to come to the best possible recommendation and that if it took coming to their conclusions at the eleventh hour to do it, that he expected them to do that. Ann Krell stated again that the proposal would be too intrusive and it would disturb the peace and tranquility of the neighborhood.

William and Manjeet Brar, 9903 Beach Mill Road, Great Falls, Virginia, spoke in opposition to the application. Mrs. Brar's concern was for the increased traffic that the proposal would generate, and how it would affect the peace and tranquility of the neighborhood. The development on the south side would affect their view from their back yard. The club's new property line would be less than 35 feet from their house. There are, on occasion, workers from the club working 100 feet from Brar's property line. Mr. Brar pointed out that the club's entrance road is on his property. He asked that the club consider how the fences would be placed. Mr. Brar stated that the planning was done haphazardly.

Clifford Oviatt, 322 Club View Drive, Great Falls, Virginia, spoke in opposition to the application. He stated that he is a member of Riverbend Country Club. He felt that the planning was ill-conceived. The proposal was too close to residences and there would be no buffer zones. He felt that other locations could have been utilized.

Mr. Bryan in his rebuttal stated that all members of the club participated in the planning process. The club did not rent out the pool house or the pool. Membership would not be increased. He also stated that the noise that the neighbors complained of was there since 1960, before the residents purchased their homes. At the time they purchased their homes, the neighbors did not pay Riverbend for a scenic easement.

Staff brought to the Board's attention the fact that they contacted the County Attorney's Office concerning the proposed changes to the applicant's affidavit and were told that the County Attorney's Office never received a copy from the applicant. Therefore, the County Attorney's Office was unable to review the changes to determine whether they were legal changes.

Mr. Bryan stated that the affidavit listed the names of the stockholders. When the affidavit was originally submitted, it showed William H. Gordon as the only stockholder. The revised copy submitted by Mr. Bryan indicated the four additional names. Mr. Bryan indicated that he submitted the affidavit in January. Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 82-D-101-6 for the reasons stated in the Resolution.

Mr. Hammack stated that the overflow parking lot was too large and too close to two property lines. He wanted to reduce the size to avoid an impact on adjoining neighbors. Mr. Hammack wanted to know why the pool had to be relocated. He requested a provision be added that would limit the parties to three parties per summer and limit swim meets and activities. Mr. Hammack also wanted clarification as to where the exercise facility would be placed.

Mr. Kelley commented that the Board should not be redesigning proposals. He stated that the additions proposed were far enough away from the residents that there should be no restrictions on the number of swim meets, parties, or activities. Mr. Bryan indicated that there were only three swim meets scheduled annually and one party during the night at the pool. They have had up to four or five swim meets per year. Mr. Bryan stated that the applicant would be willing to accept any restrictions of that nature.

Mr. Pammel stated that he could not support the motion because he felt that staff's recommendation was one that he was comfortable with until there was an opportunity to look at the proposal again.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-6 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to permit building additions, site modifications, increase in land area, and modifications to development conditions. Located at 9901 Beach Mill Rd. on approx. 175.80 ac. of land zoned R-E. Dranesville District. Tax Map 8-1 ((1)) 22, 23, 41; 8-3 ((1)) 4; 7-2 ((1)) 21 pt. 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 28, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has made great efforts to address the complaints of the neighbors and has offered to mitigate the noise that may be created by the pool and the parking lot.
3. The applicant has demonstrated a history of trying to accommodate their neighbors and has tried to remain in accordance with the County 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 Sect(s). 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, 9901 Beach Mill Road (175.8 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates Inc. (Joseph W. McClellan, P.E.) dated November 7, 1997, as revised through March 18, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the

County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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 the following:

- Clubhouse- 7:00 a.m. to 1:00 a.m.
- Swimming Pool - 7:30 a.m. to 10:00 p.m.
- Golf Course- 7:30 a.m. to dusk
- Outdoor Tennis Courts- 7:30 a.m. to 11:00 p.m.
- Indoor Tennis Courts- 6:00 a.m. to 11:00 p.m.
- Indoor Exercise Courts- 6:00 a.m. to 11:00 p.m.

6. If the indoor tennis courts are enclosed in a bubble rather than within a building, the inflation of the air enclosed bubble shall be permitted only between October 1 and May 31.

7. Country club membership shall be limited to 600 persons with a corresponding minimum of 150 parking spaces.* There shall be a maximum of 299 parking spaces, all in existing locations, and in the location shown for the driving range. All parking shall occur on-site.

8. There shall be no further construction or paving in the area of the flood plain, beyond what exists prior to approval of this special permit. In addition, vegetation shall be maintained immediately to the southeast of the existing paved area to promote filtration of stormwater runoff prior to its entry into the swale.

9. Landscaping and existing vegetation along all lot lines shown on the Special Permit Plat, as modified by these development conditions, shall be deemed to satisfy the transitional screening requirements. Prior to site plan approval, a landscape plan shall be submitted for review and approval of the Urban Forestry Branch of DEM which includes the landscaping shown on the plat for the driving range, and additional landscaping using evergreen plant materials in the following areas:

- Planting of the type and intensity of Transitional Screening Type II, along the northern property boundary opposite the access drive and operations building for the driving range, for a distance of 450 feet from the private drive extending from Beach Mill Road, and containing a minimum width of 50 feet, to provide additional screening of the 10 space parking lot and operations building from adjacent residences;
- Existing vegetation along the southern and western property boundary for the driving range shall be supplemented with evergreen plant materials to provide year round screening of the driving range where possible for existing and future residential lots.

10. Barrier requirements along all lot lines shall be waived.

11. If it is determined by the Urban Forestry Branch of DEM that the existing 72 inch diameter elm tree should be preserved, the sand bunker shown around the tree shall be relocated outside the drip lines of the tree, or the bunker shall be removed. Prior to approval of a site plan or grading plan, a tree save/tree replacement plan shall be submitted for review and approval by the Urban Forestry Branch of DEM. This plan shall identify and provide for the preservation of all individual mature, large and/or specimen trees and tree save areas within the limits of

clearing and grading, to the greatest extent possible, as determined by the Urban Forestry Branch of DEM. The plan shall provide for the replacement of trees which will be lost during clearing and grading activities, with the size and number of species to be determined by the Urban Forestry

Branch of DEM.

- 12. During discharge of swimming pool waters the following operation procedures shall be implemented:
 - Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board Standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
 - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.
- 13. Prior to site plan approval, the applicant shall prepare a Golf Course Water Quality Management Plan for the application of fertilizers, herbicides, pesticides, and turf maintenance, for review and approval by the Northern Virginia Soil and Water Conservation District and DEM. Once approved, the applicant shall implement the plan, which shall be monitored by the Northern Virginia Soil and Water Conservation District. The plan shall be designed to control, manage the application of fertilizer, herbicides, and other chemicals to protect water quality in the Pond Branch watershed.
- 14. Any outdoor lighting of the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures for the tennis courts shall not exceed twenty (20) feet.
 - The combined height of the light standards and fixtures for the swimming pool and swimming pool parking shall not exceed fourteen (14) feet in height.
 - The lights shall focus downward directly on the subject property.
 - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.
 - The lights, including any associated with an air enclosed bubble, shall be controlled by an automatic shut-off device.
 - There shall be no outdoor lighting for the golf driving range.
- 15. Any sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.
- 16. Barrier requirements along all lot lines shall be waived. Landscaping and existing vegetation along all lot lines shown on the Special Permit Plat, as modified by these development conditions, shall be deemed to satisfy the transitional screening requirements.

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

Pursuant to Sect 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator

Page 451, April 28, 1998, (Tape 1), RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-6, continued from Page 450

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 4-2. Mr. Hammack and Mr. Pammel voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 6, 1998. This date shall be deemed to be the final approval date of this special permit.

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As a Board matter, Mr. Ribble introduced the newest member of the Board, Nancy E. Gibb, who was recently appointed by the Circuit Court, but who had not yet been sworn in.

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Page 451, April 28, 1998, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT F. WHEELER, TRUSTEE, A 1997-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a storage yard and a junk yard in the R-1 District, all in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8270 Silverbrook Rd. on approx. 8.65 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-1 ((1)) 1. (DEF. FROM 8/5/97. DEF. FROM 10/28/97 AT APPLICANT'S REQUEST. NOTICES MUST BE DONE. DEF. FROM 1/27/98).

William Shoup, Deputy Zoning Administrator, stated that the storage of items on the appellant's property was at issue. The appellant was cited for maintaining a storage and junk yard. In Mr. Shoup's April 21, 1998, memorandum, he indicated that the appellant made considerable effort to remove items from the property. Mr. Shoup submitted photographs which showed the current status of the lot.

Mr. Shoup stated that there were still a number of inoperable vehicles, construction equipment, two trailers, one of which is a tractor/trailer combination, and also some miscellaneous scrap material on site. It was Mr. Shoup's position that the appellant still maintained a junk yard and storage yard and that the appellant remained in violation of the Zoning Ordinance.

Royce A. Spence, Agent, 7297-A Lee Highway, Falls Church, Virginia, stated that there was adequate screening in place so that none of the items mentioned by Mr. Shoup could be seen from the road. In fact, he indicated that there were neighbors present to speak in support of the application. Mr. Spence stated that Mr. Wheeler had been cooperative in that he had cleared several items off of the property. Out of 71 pieces of equipment and vehicles, there were only 15 items left on the property. The storage trailer would be taken off of the property shortly.

Mr. Spence referenced the fact that inspectors trespassed on to Mr. Wheeler's property to look for an alleged repair shop inspite of seeing the "no trespass" signs posted on the property. The complaint from the zoning office moved from Mr. Wheeler having a repair shop, to him having a storage and junk yard. Mr. Spence pointed out that the property is an 8.65 acre parcel surrounded by trees and that the screening blocks out whatever is on the property.

The appellant contended that the six vehicles and two pickups were accessory uses under Sect. 10-102.13 which states that inoperative vehicles were allowed on the property as long as they were screened from adjoining properties. Mr. Wheeler used the equipment to maintain and grade his property. Mr. Wheeler also used the equipment to grade his neighbors' properties. Some of the equipment was over 40 years old.

Mr. Spence added that staff contended that Mr. Wheeler was in violation of Sect. 10-102.16 which stated that construction equipment could not be parked on his property. Parking, in Mr. Spence's opinion, was considered transitory. The vehicles on Mr. Wheelers property, he stated, were neither stored or parked. The equipment was used on the property.

Chairman called for speakers in support of the application.

Erma Clifton, Ox Road, Lorton, Virginia, spoke on behalf of the Federation of Lorton Communities which represented over 30 civic associations in the Lorton, Newington, and Mason Neck area. The concern of the organization was the image of Lorton and the environmental damage which may be caused by surrounding properties. Ms. Clifton stated that the Wheeler property was a junk yard. She stated that there was no such activity on the Wheeler property by previous owners. Ms. Clifton stated that if the appellant wanted to own a junk yard, he should have considered property zoned for that use. Ms. Clifton pointed out to the Board that the case had been ongoing for over a year and that the County should require that the debris be removed and the land be tested for environmental hazards and returned to its 1985 condition. She also pointed out that during the fall and winter, the junk yard was visible if you knew what to look for.

Wendell Nicks, 6802 Trefor Court, Springfield, Virginia, spoke in support of the appeal. He stated that the Lorton Maximum Security Prison was around the corner from the Wheeler property. He stated that the prison was a nuisance, not the Wheeler property. The property is screened by trees and that it was impossible to see what was on the property. He stressed that Mr. Wheeler used the equipment on the property to maintain his property. Mr. Nicks stated that he had seen, on several occasions, Mr. Wheeler using the equipment to maintain his property. The equipment on the Wheeler property, in Mr. Nicks opinion, are Mr. Wheeler's toys. He stressed that Mr. Wheeler was a good neighbor.

James Lincoln, 6901 Oak Court, Annandale, Virginia, spoke in support of the application. He stated that he was cited for the same violations as Mr. Wheeler and that Mr. Shoup was the individual that cited him. Mr. Lincoln stated that he collected and restored cars similar to the way that Mr. Wheeler did. Mr. Lincoln erected a fence and placed screening to obscure the view from the complaining neighbors, and was given a clean bill of health. Mr. Lincoln pointed out that Mr. Wheeler's property was so well screened that it was almost impossible to see anything on the property. Mr. Lincoln stressed that Mr. Wheeler had made many improvements on his property and that it was well maintained.

Gerald Boyer, 8631 Reseca Lane, Springfield, Virginia, spoke in support of the application. He stated that the Wheeler property was a beautiful piece of property. He said that Mr. Wheeler was unique and that he did have a collection of unusual items on his property, but that they were of no commercial use or value. Mr. Boyer stated that the items were for Mr. Wheeler's personal use and enjoyment. He also stated that Mr. Wheeler's property enhanced the Lorton community and that you would have to trespass on to the property to see any of the items. Mr. Boyer indicated that Mr. Wheeler needed protection from government intrusion.

Doug Spalding, 8262 Silverbrook Road, Lorton, Virginia, spoke in support of the applicant. Mr. Spalding stated that Mr. Wheeler's property encompassed his property. Mr. Wheeler's land is visible from his property and the Wheeler property is a beautiful piece of property. Mr. Wheeler has assisted Mr. Spalding in improving his garden on occasion with his equipment. Mr. Spalding stated that he pruned trees and shrubbery in order to have a view of the Wheeler property.

Mr. Shoup responded to the trespass issue by stating that at the time of the inspection of Mr. Wheeler's property, there were no signs posted. There was only a chain across the driveway. The chain did not block the inspector's ability to access the property. He also stated that the County Attorney's Office was consulted and that they indicated that the inspectors had the right to enter on to the property even with a "no trespassing" sign. Chairman DiGiulian asked Mr. Shoup to provide the Board with the County Attorney's opinion on the "no trespassing" issue. Mr. Shoup went on to say that when the inspectors entered on to the property, they spoke to Mr. Wheeler and were never asked to leave the property.

Mr. Shoup stated that if the vehicles on the property were to be considered an accessory use, they would have had to have been subordinate to the dwelling which is the principle use. It also would have to have been customarily found in association with the principle use and also serve the principle use. Up to four of the inoperable vehicles could have been considered a permissible accessory use. Beyond that, it would have been difficult to show how the remaining inoperable vehicles would have met the criteria of the accessory use definition, according to Mr. Shoup. The construction equipment did not qualify as an accessory use. He noted the provision that prohibits the parking of construction equipment on residential property.

Mr. Shoup indicated that Mr. Wheeler had been very cooperative but that he did not think that Mr. Wheeler had done enough to resolve the violation and that Mr. Wheeler still maintained a junk yard and storage yard.

Mr. Ribble wanted to know who made the complaint against Mr. Wheeler. Mr. Shoup indicated that the complaint came from the Supervisor's office but that the name was withheld.

Mr. Spence, in his rebuttal, emphatically stated that Mr. Wheeler was second to none in his love for the beauty of the Lorton area and that Mr. Wheeler was not in violation of the Ordinance. Mr. Spence indicated that there was adequate screening and that the neighbors indicated that it was very difficult to see what was on Mr. Wheeler's property. Mr. Wheeler is a collector of vehicles and equipment and that was the cause of the accumulation.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination. Mr. Hammack stated that novel arguments were made by Mr. Spence and even though the impact of the usage on the property was not great, there was still a continuing violation. Mr. Hammack complimented Mr. Wheeler on his efforts to clean his property. Mr. Pammel seconded the motion.

Mr. Kelley stated that when the case first came before the Board, he agreed with the Zoning Administrator. Since then, Mr. Wheeler had made great efforts to clean the property and that he felt that Mr. Wheeler was not in violation any longer. Chairman DiGiulian agreed with Mr. Kelley stating that if the case were a court case, it would have been thrown out because of the trespass issue and the fact that the complaint against Mr. Wheeler was made anonymously. Chairman DiGiulian also stated that staff was unable to indicate how many pieces of equipment were on Mr. Wheeler's property. Chairman DiGiulian also stated that the equipment was not visible. He did not support the motion.

The motion failed for a lack of four votes. Mr. Hammack and Mr. Pammel voted in favor of the motion and Chairman DiGiulian, Mr. Kelley and Mr. Ribble voted against the motion. The Zoning Administrator's determination was upheld.

Mr. Kelley indicated that he wanted to change his vote and voted in favor of the motion in order to preserve his right to vote for a reconsideration if it were to come up. Mr. Ribble also indicated that he would change his vote to be in favor of the motion. Chairman DiGiulian commented that the vote was 4-1 in favor of the motion.

Mr. Spence made a request for reconsideration.

Mr. Kelley moved that the Board reconsider the case and requested that a date be set for three months. Mr. Ribble seconded.

Mr. Pammel stated that within that timeframe there should be more progress with respect to what was left on the Wheeler property.

The motion carried by a vote of 5-0. Mr. Dively was not present for the vote. The reconsideration date was set for July 28, 1998, at 9:30 a.m.

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Page 453, April 28, 1998, (Tape 1), Scheduled case of:

9:30 A.M. GERALD COOPER, A 1997-MA-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the service station use has been discontinued and therefore, the continued sales and installation of tire constitutes the operation of a vehicle light service establishment without required special exception approval. Located at 5919 Columbia Pi. on approx. 35,500 sq. ft. of land zoned C-5, SC and HC. Mason District. Tax Map 61-2 ((1)) 120. (DEF. FROM 9/16/97 AT APP.'S REQUEST).

Chairman DiGiulian indicated that a request for withdrawal had been submitted.

William Shoup, Deputy Zoning Administrator, stated that the issue was the reestablishment of a service station and that the question was whether or not the appellant had reestablished the station with the pumping of gasoline as the primary use. The outstanding issue was the installation of a gasoline pump with two dispensers on it. Mr. Shoup indicated that Ken Broadwater, who represented the appellant, had been present but had to leave before the case was called, however, he represented to Mr. Shoup that he wanted to request that the case be deferred for two more weeks. The pump was purchased but the appellant was unable to have the pump installed before his hearing date. Mr. Shoup stated that he had no objection to the delay until the pump was installed. Once the pump was installed, the service station would be considered reestablished and the violation resolved.

Mr. Kelley made a motion to defer the appeal until, May 12, 1998 to allow for the installation of the gas pump. Mr. Ribble seconded. The motion carried by a vote of 5-0. Mr. Dively was absent for the vote.

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Page 454 April 28, 1998, (Tape 1), Action Item:

Request for Additional Time
SPA 77-A-041-2

Mr. Pammel noted that the case was a 1977, case. He stated that there were some financial considerations which precluded the applicant's ability to move in a timely fashion.

Mr. Pammel moved to approve the Request for Additional Time to Establish the Use for SPA 77-A-041-2 to October 25, 2000. The motion was seconded by Mr. Kelley which carried by a vote of 5-0. Mr. Dively was not present for the vote.

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Page 454 April 28, 1998, (Tape 1), Action Item:

Out-of-Turn Hearing Request for Paul S. & Kathleen M. Pastor
VC 98-Y-046

Mr. Hammack asked staff on what date was the case currently scheduled. Staff replied that it was scheduled for July 14, 1998, and that the only open dates they had were July 7 and June 30. Mr. Pammel asked if there were something unusual about the application and staff replied that there was nothing unusual about the case.

Mr. Pammel moved to deny the request for an out-of-turn hearing for VC 98-Y-046. Mr. Hammack seconded. The motion carried by a vote of 5-0. Mr. Dively was absent for the vote.

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Page 454 April 28, 1998, (Tape 1), Action Item:

Out-of-Turn Hearing Request for Joan Leslie
VC 98-P-045

Staff indicated that the case was scheduled for July 14, 1998. Mr. Hammack stated that the applicant, in her letter, indicated that she had been waiting since December 1997. Staff replied that the applicant had not been waiting for acceptance but had been waiting to get the actual work done.

Mr. Pammel moved to deny the request for an out-of-turn hearing for VC 98-P-045. The motion was seconded by Mr. Kelley. The motion carried by a vote of 5-0. Mr. Dively was absent for the vote.

Page 455, April 28, 1998, (Tape 1), After Agenda Item, continued from Page 454

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Page 455, April 28, 1998, (Tape 1), Action Item:

Rescheduling of September 15, 1998, Public Hearing Date

Susan Langdon, Chief, Special Permits and Variance Branch, related to the Board that September 15, 1998, hearing date was a time that the Planning Commission wanted to meet and that it was a night meeting. Ms. Langdon stated that the Board would be able to change that meeting date to a day meeting or change the date of that meeting to September 22, 1998, at 8:00 p.m.

Mr. Kelley moved to reschedule the September 15, 1998, 8:00 p.m., night meeting to September 15, 1998, at 9:00 a.m. Mr. Ribble seconded the motion. The motion carried by a vote of 5-0. Mr. Dively was absent for the vote.

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Page 455, April 28, 1998, (Tape 1), Action Item:

Discussion of Out-of-Turn Hearing Request for Powerhouse Paintball, Inc.

Susan Langdon, Chief, Special Permits and Variance Branch, stated that the application was to allow a paint-ball facility. The application was submitted by the applicant in March and had not been accepted. Ms. Langdon reminded the Board that hearings were not scheduled until an application had been accepted or completed.

Mr. Kelley moved that the case be scheduled on June 30, if the application was filed and accepted within the next ten days. Mr. Ribble and Mr. Hammack seconded the motion.

Ms. Langdon indicated that she supplied the Board with a copy of the submission requirements and the package that is given to applicants which explained the application process. She also stated that the applicant had requested a modification of the submission requirements for plats which were being reviewed. The plats had not been submitted by the applicant until April 22, 1998. The site was previously approved for batting cages and that use had ceased. The applicant submitted the old special permit plat that was originally approved for the batting cage and asked staff to use those as his special permit plats.

Ms. Langdon stated that she was unsure as to when the application would be accepted and was unsure as to what else the application was lacking.

Mr. Pammel moved to schedule the out-of-turn hearing for June 30, 1998, pending the acceptance of the application. Mr. Hammack seconded. The motion carried by a vote of 5-0. Mr. Dively was absent for the vote.

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As there were no other business matters to come before the Board, the meeting was adjourned at 12:03.

Minutes by: Denise Snyder, Deputy Clerk

Approved on: May 19, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John P DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 5, 1998. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Robert Dively; Paul Hammack; Robert Kelley; and, John Ribble. Mr. Pammel was absent from the meeting

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 457 May 5, 1998 (Tape 1), Scheduled case of:

9:00 A.M. HILLTOP SAND AND GRAVEL COMPANY, INC., SP 97-L-037 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit golf course, golf driving range, miniature golf course, baseball hitting range and accessory uses. Located at 7928, 7900, 7836, and 7950 Telegraph Rd. on approx. 106.19 ac. of land zoned R-1, PDH-4, I-3 and NR. Lee District. Tax Map 100-1 ((1)) 9 pt., 17 and 23A. (Associated with RZ 1997-LE-041, RZ 1997-LE-042, RZ 1997-LE-043, and SEA 78-L-074-5); (moved from 4/2/98).

Chairman DiGiulian called the scheduled case. Susan Langdon, Chief, Special Permit and Variance Branch, said the case included a rezoning and a special exception to be heard by the Planning Commission and the Board of Supervisors. She said the Planning Commission and the Board of Supervisor's offices had deferred this case until July, 1998, and asked that the Board of Zoning Appeals (BZA) defer the case until August, 1998. She said the case might also need a plan amendment.

Mr. Ribble made a motion to defer the case until August 4, 1998, at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Hammack were not present for the vote.

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Page 457 May 5, 1998, 1998 (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH W. LUND, VC 98-D-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 5830 Bent Twig Rd. on approx. 12,307 sq. ft. of land zoned R-2 (cluster). Dranesville District. Tax Map 31-2 ((19)) 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. Agent for applicant, William S. Sikes, Jr., 10560 Main Street, Suite 310, Fairfax, Virginia, said that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a screened porch addition 11 feet from the rear lot line. A minimum rear yard of 25 feet was required; therefore, a variance of 14 feet was being requested.

Mr. Sikes stated that the applicant wanted to build the screened porch on the back of his house but due to the shape of the lot, there was no way to accomplish this without a variance. He said this would not have an impact on the neighborhood and it fit architecturally with other homes in the neighborhood.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 98-D-023, for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH W. LUND, VC 98-D-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 5830 Bent Twig Rd. on approx. 12,307 sq. ft.

of land zoned R-2 (cluster). Dranesville District. Tax Map 31-2 ((19)) 33. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine standards required for a variance.
3. The lot is irregularly shaped.
4. The rear yard is 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch addition shown on the plat prepared by Wm. S. Sikes, Jr., dated January 6, 1998, revised January 23, 1998, 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 porch shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained and 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 13, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 459 May 5, 1998 (Tape 1), Scheduled case of:

9:00 A.M. JACQUELYNN SUTPHIN, SP 98-Y-007 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit home child care facility. Located at 14711 Pickets Post Rd. on approx. 10,996 sq. ft. of land zoned R-3 (cluster) and WS. Sully District. Tax Map 65-3 ((5))(3) 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. Jacquelynn Sutphin, 14711 Pickets Post Road, Centreville, Virginia, said that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for a home child care facility for up to ten children at any one time to be operated in her home. This facility would have two employees including herself and would be operated between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. Parking would be provided in the existing 2-car driveway and in the 2-car garage. Staff recommended approval of this application subject to the Development Conditions dated April 28, 1998.

Ms. Sutphin said she operates a child care facility from her home as a service to members of the community. She said she cares for children before and after school, as well as full-time, from 7:00 a.m. until 6:00 p.m. Ms. Sutphin stated that the reason for the special permit application was to increase the number of children to 10 to allow her to take care of more of the neighborhood children. She said this would not increase the traffic because the children are from the neighborhood. She referred to a letter received from the Virginia Department of Transportation that indicated the traffic would not increase. Ms. Sutphin said the noise was not an issue because the children were supervised when they are outside. She said there were letters from neighbors who supported this application. Ms. Sutphin said she agreed with the Development Conditions contained in the staff report.

Ms. Sutphin said she received a letter from the Home Owners' Association (HOA) informing her that operation of the child care facility was against the covenant because the use was deemed for residential use only. She said she had obtained 109 neighbors showing support.

Chairman DiGiulian called for speakers in support of the application.

Amy Balint, 14610 Meeting Camp Road, said she lived at her present address for six years and that she knew the applicant fairly well. She said she did not use the applicant's facility, but she supported the application. She said there were approximately 37 children in the neighborhood from about 20 different homes and not all of the children were elementary school age. Ms. Balint said the applicant operated a

clean facility.

Donna Cooper, 14352 Uniform Drive, Centreville, Virginia, said she did not live in the neighborhood but her 2 children attended the applicant's day care. She said every parent wants a nice, safe environment for their child while they were at work and that is what the applicant provided for her. Ms. Cooper said the applicant provides professional care and a clean environment. Ms. Cooper said the applicant has one other worker who assisted with the children. There were lots of educational program for the children. She said the noise was not an issue and there were no traffic issues because most of the parents live in the neighborhood and they walk to the child care facility.

Renee Smith, 14716 Pickets Post Road, said her children attend the applicant's child care facility. She said she would be concerned for her children if the applicant's home was dirty and she had children running up and down in the yard. Ms. Smith said the applicant provides a stable environment and she also provided access to her home for the County when requested. She said she did not understand why the Home Owners' Association had to be brought into this issue since this was a neighborhood concern.

Chairman DiGiulian called for speakers in opposition.

Rick Reed, 14710 Pickets Post Road, Centreville, said his property is located directly across the street from the applicant's. He said he lived at this location for four years and some of the reasons he purchased the property were because of location, neighborhood security, quality of the neighborhood, and the people who lived there. Mr. Reed read the HOA's declaration and provided a copy for the record. He said this would have an impact on the neighborhood. Mr. Reed stated that his driveway had been used several times for dropping off and picking up children. He requested that the BZA deny the application.

David Butchko, 14706 Pickets Post Road, said he had no doubt the applicant offered quality care. He said the rezoning of the applicant's property would adversely affect the value of the properties in the neighborhood, traffic would be increased, and the neighborhood would no longer be quiet.

There were no other speakers and Chairman DiGiulian called the applicant for rebuttal.

Ms. Sutphin said there were a few homeowners who opposed the application and two thirds approved. She said the increase in traffic would not be due to the increase in three children because the children were from the neighborhood. She said the reason she applied for the special permit was not because of the financial benefit but to help her neighbors find quality child care before and after school.

Ms. Sutphin said she was one of the first four homeowners in the development and she did not receive a copy of the covenant. She said she was not aware that her child care facility was in violation of the HOA's agreement and she took action immediately to correct that.

Mr. Dively wanted to know why the request for ten children was not in the Development Conditions. Ms. Schilling said staff would amend the Development Conditions. Mr. Dively asked what was the maximum number of children by-right and Ms. Schilling said seven are allowed the by-right.

Mr. Dively asked the applicant why she needed to increase the number of children from seven to ten. Ms. Sutphin said there was a need in the neighborhood for more than seven children. Mr. Dively stated that an increase from seven to ten children would appear to be a larger business. Ms. Sutphin said it was easier to organize activities for the children based on grade level and age grouping. She said when there were one or two children per age group, it was hard to organize activities that would allow them to interact and develop at the right stages. Ms. Sutphin said this would help the children to develop interpersonal skills

Mr. Kelley wanted to know if the children were all pre-school. Ms. Sutphin said the children ranged in ages from 5 ½ months to 9 years old. Mr. Kelley asked if the applicant had more than seven children currently enrolled. Ms. Sutphin said there were ten children total, but they did not all attend at the same time. She said there were three full-time children and six or seven part-time children. Some were after-school, some were two days per week, and some shared slots. Ms. Sutphin said she is licensed by the State of Virginia for up to 12 children but she only wanted to increase from seven to ten because of the zoning restrictions by Fairfax County.

Mr. Hammack wanted to know how many days the applicant had more than seven children on the premises. Ms. Sutphin said she was not allotted for more than seven children currently, but there were two days during the week when ten children were present.

Mr. Ribble asked the applicant if she had children of her own and she responded saying she has a 6 year-old. Mr. Ribble asked staff if the applicant's children were included in the ten on the application. Ms. Schilling said she would be allowed ten children not including her own.

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

Mr. Hammack made a motion to deny the application based on the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUELYNN SUTPHIN, SP 98-Y-007 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit home child care facility. Located at 14711 Pickets Post Rd. on approx. 10,996 sq. ft. of land zoned R-3 (cluster) and WS. Sully District. Tax Map 65-3 ((5))(3) 32. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has not presented testimony indicating compliance with general standards for special permit uses.
3. The additional children that would be permitted under the application would turn the use into a more commercial operation.
4. This use would not be in harmony with the neighborhood under General Standards 3 for special permit

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303 and 8-305 of the Zoning Ordinance.

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

Mr. Dively and Mr. Ribble seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 13, 1998.

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9:00 A.M. HENRY M. LEIDEMER, SP 98-P-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.1 ft. from rear lot line. Located at 2219 Journet Dr. on approx. 2,953 sq. ft.

of land zoned R-5. Providence District. Tax Map 39-4 ((38)) 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. Henry M. Leidemer, 2219 Journet Drive, Dunn Loring, Virginia, said it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a modification to allow reduction to the minimum yard requirement based on an error in building location to permit an addition to remain 8.1 feet from the rear lot line. The addition was a deck with privacy screening. A rear yard of 20 feet is required; therefore, a modification of 11.9 feet was requested.

Mr. Leidemer said he purchased his property in May of 1994 and obtained a building permit for the deck in June of 1994. The privacy screening was not included in the building permit but while his builder was constructing the deck, he asked Mr. Leidemer if he wanted the privacy screening and Mr. Leidemer told him to go ahead and do it. Mr. Leidemer said his final inspection from the County took place in September of 1994. He said he assumed the inspection included the privacy screening. Mr. Leidemer stated that the BZA approved two similar special permits in the past.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve SP 98-P-004 for the reasons contained in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRY M. LEIDEMER, SP 98-P-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.1 ft. from rear lot line. Located at 2219 Journet Dr. on approx. 2,953 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((38)) 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 May 5, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has presented testimony indicating compliance with general standards for special permit uses.
- 3. The provision for approval is a reduction in minimum yard requirements based on error in building location.
- 4. Standards A through G of the standard mistake form has been met by the applicant.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-914 of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of a deck with privacy screening shown on the plat prepared by Richard J. Cronin, IV, dated February 13, 1998, submitted with this application and is not transferable to other land.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 13, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 463, May 5, 1998 (Tape 1), Scheduled case of:

- 9:00 A.M. PHUONG HT TRIEU AND DAO TRIEU, SP 98-M-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 accessory storage structure to remain 2.9 ft. from rear and 7.6 ft. from side lot lines. Located at 7111 Hickory Hill Rd. on approx. 13,497 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 109. (Concurrent with VC 98-M-022).
- 9:00 A.M. PHUONG HT AND DAO TRIEU, VC 98-M-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit enclosure of accessory storage structure which exceeds 200 sq. ft. and fences 8.0 ft. high to remain in front, side, and rear yards. Located at 7111 Hickory Hill Rd. on approx. 13,497 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 109. (Concurrent with SP 98-M-005).

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 Pham, 2922 Wiston Place, Falls Church, Virginia, said it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant was requesting approval of both the special permit and variance. The special permit was to allow reduction to the minimum yard requirements based on an error in building location to permit an accessory storage structure to remain 2.9 feet from the rear lot line and 7.6 feet from a side lot line. A minimum rear yard of 10.5 feet and a minimum side yard of 10 feet is required for the structure. Therefore, a modification of 7.6 feet to the rear yard requirement and a modification of 2.4 feet to the side yard requirement was being requested. The applicant was also requesting approval of two variances. One variance was to permit enclosure of the accessory structure, which is 600 square feet in size. The Zoning Ordinance states that storage structures are permitted in the R-2 through R-20 Districts providing they do not exceed 200 square feet in size. The other variance application was to permit an 8-foot high fence to remain in the front, rear, and side yards. The Zoning Ordinance states that in any front yard on any lot, a fence or wall not exceeding 4 feet in height is not permitted, and in any side or rear yard on any lot, a fence or wall not exceeding 7 feet in height is permitted.

Mr. Pham said the shed had already been built but was a little oversized. He said the vending trucks that the applicant had are a little noisy. Mr. Pham said he understood that is against the County's Zoning Ordinance to park more than one commercial vehicle in a residential neighborhood. He said the trucks were no longer noisy in the neighborhood.

Mr. Dively asked Mr. Pham if the applicant had obtained a building permit when the structure was constructed. Mr. Pham said he did not apply for a building permit when the structure was built but that he intended to apply for one when his special permit and variance application was approved. Mr. Dively asked if he intended to obtain a permit as part of the special permit and variance applications and Mr. Pham said that was his intent.

There were no speakers in support and Chairman DiGiulian called for speakers in opposition.

Lee Yarborough, member of the Holmes Run Valley Citizens Association, said the inspection report of Zoning Inspector, William Moncure, stated there was a storage of commercial vehicles and vending trailers, warehousing of commercial vending stock and trade items, the erection of structures to include accessory storage structures, a fence and utilization of property as a junk yard. Mr. Yarborough said there were several people who opposed these applications because the applicant did not get a permit and was using the property as a business.

E. M. Mobson, 7105 Hickory Hill Road, said he had lived at this address since 1966, and had seen the development since 1994. He said the report by the sheriff's office confirmed his suspicion. Mr. Mobson said according to Appendix 7 of the staff report, four of the nine requirements for approval of a variance request had not been met. He said Numbers 2, 7, 8, and 9 appeared to be the opposite of the intent.

Walter Cilinski, 7107 Hickory Hill Road, said he had lived at this address since 1951 and this had been a beautiful residential area. He said he had no malice against the applicant but the applicant had been storing food inside the structure in question, and this breeds rats and insects. Mr. Cilinski said the applicant had used the home for commercial uses by keeping several trucks in the yard in the evenings. He said this activity decreased the value of the surrounding properties. He opposed to the Board approving the applications.

In rebuttal, the applicant said the shed had already been built and it was an old shed which was very dirty and had rats. He said he intended to remove the old shed if the application for the new shed was approved.

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

Mr. Dively made a motion to deny the special permit and variance application. He said the pictures spoke for themselves, which showed that the structure was not in harmony with the neighborhood. The structure was three times larger than was allowed and there was no building permit requested.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PHUONG HT TRIEU AND DAO TRIEU, SP 98-M-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 accessory storage structure to remain 2.9 ft. from rear and 7.6 ft. from side lot lines. Located at 7111 Hickory Hill Rd. on approx. 13,497 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 109. (Concurrent with VC 98-M-022). 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 5, 1998; and

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

1. The applicant is the owner of the land.
2. The structure is three times larger than what is allowed.
3. The structure is not in harmony with the neighborhood.
4. There was no building permit or a request made for the structure.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 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 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 13, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHUONG HT AND DAO TRIEU, VC 98-M-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit enclosure of accessory storage structure which exceeds 200 sq. ft. and fences 8.0 ft. high to remain in front, side and rear yards. Located at 7111 Hickory Hill Rd. on approx. 13,497 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 109. (Concurrent with SP 98-M-005). 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 5, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The structure is three times larger than what is allowed.
- 3. The structure is not in harmony with the neighborhood.
- 4. There was no building permit or a request made for the structure.

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.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 13, 1998.

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Page 466, May 5, 1998 (Tape 1), Scheduled case of:

9:30 A.M. ROLLING VALLEY PROFESSIONAL CENTER CONDOMINIUM UNIT OWNERS ASSOCIATION, A 96-S-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's issuance of a Non-Residential Use Permit to Rolling Valley Nail Care as an accessory service use in the C-1 District. Located at 9295 Old Keene Mill Rd. in a condominium unit of approx. 1,315 sq. ft. on land zoned C-1. Springfield District. Tax Map 88-2((24)) 28.(moved from 1/28, 3/4/97, 4/22/97 and 6/3/97. def. from 8/12/97 TO 3/3/98)

Chairman DiGiulian called the appellant to the podium. Peter Philbin, attorney for Rolling Valley Professional Center Condominium Owners Association, indicated that he was representing the appellant.

Donna Roberson, Staff Coordinator, Zoning Administration Division, made staff's presentation as outlined in the staff report. She indicated that the appeal was related to the issuance of a Non-Residential Use Permit (Non-Rup) to the Rolling Valley Nail Care located within the development. The site is developed with approximately 30 one- and two-story townhouse style office condominiums in 7 buildings with a gross floor area of approximately 52,000 square feet. The C-1 District regulations provide that accessory service uses in addition to office and other uses are permitted in the District. Further, the accessory service use provisions state that personal service establishments are permitted as an accessory use to office uses. A nail salon is deemed to be a personal service establishment; therefore, the Zoning Ordinance permits a nail salon as an accessory service use to an office development in the C-1 District. Accessory service uses must be subordinate to a principal use. They must orient themselves to cater primarily to the residents or the employees of that principal use with which they are associated. The Ordinance does not require that accessory service uses serve only the principal use. On October 4, 1996, the Rolling Valley Nail Care applied for the issuance of a Non-Rup to operate a nail salon in the Rolling Valley Professional Center. The Non-Rup was issued upon an evaluation of representations made by the Non-Rup applicant and by a determination by staff of the Zoning Permit Review Branch that the proposed use satisfies the definition of an accessory service use, the limitations for such accessory service uses, the C-1 District regulations and the parking requirements for accessory service uses. Also, upon application, the applicant executed a Certificate of Understanding, which certified that they understood and would comply, and that the use would be conducted in accordance with the applicable provisions of the Zoning Ordinance. It was staff's position that the Rolling Valley Nail Care was appropriately issued a Non-Rup based on the information available at the time of their request. With the appeal application, the appellant provided information regarding signs and advertising associated with the nail salon, which the appellant believed contradicted the provisions of the Zoning Ordinance. This information prompted the Zoning Enforcement staff to investigate the business to determine if it was operating in violation of the Zoning Ordinance. It was determined that violations existed with regard to off-site signage and excessive on-site signage and a failure to operate the business in accordance with the definition and use limitations for accessory service uses. Appropriately, a Notice of Violation was issued to the nail care facility on April 8, 1998. It was staff's position, however, that the

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Zoning violations which occurred subsequent to the issuance of the Non-Rup did not indicate that the Non-Rup was issued in error, but rather it indicated a failure to comply with the applicable regulations subsequent to the establishment of this business. Through meetings with nail salon representatives, staff was informed that off-site signs would no longer be utilized, on-site signage had been reduced to comply with the 15 square foot maximum for accessory service uses. Additionally, the operators had indicated that advertising and promotional activities would not be geared toward the general public in the future. It was staff's position that the violations had been cleared. In summary, it was staff's position that the Non-Rup was appropriately issued to the Rolling Valley Nail Care and that subsequent violations of the Zoning Ordinance did not indicate that a Non-Rup was improperly issued. It was noted that the Board of Supervisors, through the Zoning Ordinance work program for fiscal year 1998 and 1999, had requested that staff look into accessory service uses in small developments such as this. Depending upon the Zoning Administrator's findings and the wish of the Board, there may be a Zoning Ordinance amendment forthcoming regarding accessory service uses.

Mr. Philbin said the Rolling Valley Professional condominium Unit Owners Association is a 35-unit which is located on Keene Mill Road across from the Pohick Regional Library, Springfield. He said he does not dispute the designation of the C-1 District, or the accessory service uses, but that the dispute concerned the process by which the Zoning Administrator went through the analysis of the Non-Rup application.

Mr. Philbin said it appeared to the appellant that the Zoning Administrator looked at the definition of the personal service establishment, which is located in Sect. 10-202 of the Zoning Ordinance, and determined that under those criteria this nail salon fit that definition. At that point they issued the Non-Rup based upon the Certificate of Understanding that was filed by the applicant which stated that they were going to operate the business in accordance with those accessory service use provisions. Mr. Philbin said the Zoning Administrator and the BZA in general, is given wide discretion to interpret the Zoning Ordinance by the General Assembly.

Mr. Philbin referred to the memorandum from the Zoning Administrator, page 6, last paragraph, which stated that "the ability of the nail salon to be sustained financially by an office complex the size of Rolling Valley is a decision to be made by the proprietor of the business." He indicated that the Board had a responsibility, and a need to question accessory uses, especially when it is in the form of a permitted use, but it was clearly a use which was normally not permitted in that C-1 District and therefore some discretion should have been utilized.

Mr. Philbin stated that this 35-unit condominium complex had a customer potential of 34 along with their employees and the owners within that community who would patronize this store. Accessory service uses, under the Zoning Ordinance, required that contribution was primarily to the comfort and convenience of the businesses served and that they be oriented primarily to residents and employees. Within days or weeks of opening this establishment, the record showed that there were advertisements placed in the newspaper, there were flyers posted throughout the area, there were mass coupon mailings that were undertaken to promote this business. In addition, the appellant's association submitted a survey to the owners which showed that close to 95% of the respondent said that they had not used the facility and were not going to use it. Further site inspections conducted at various times in December 1996, and January 1997, indicated that all of the patrons who were observed arriving and departing by way of Old Keene Mill Road did not enter any other businesses within the professional center. Mr. Philbin stated that it was the Zoning Administrator's claim that the survey did not really matter because all the Ordinance required was that the use be oriented to serve the patrons of the primary use. He maintained that the use was not oriented with the presence of off-site signs, the size and orientation of the on-site signs, the advertisements in the local newspaper, the coupon booklets, which were mass mailed, and the observations of the Rolling Valley staff who were coming and going from the association and does not cater primarily to the employees and patrons of the principal use.

Mr. Philbin stated that nail salon did not fit within the definition of an accessory use and that some discretion by the Zoning Administrator was necessary at that stage. He asked that the Non-Residential Use Permit that was issued be revoked. In the alternative, he asked that the Board instruct the Zoning Administrator to continue its efforts to determine whether or not this service use is primarily serving the owners.

Chairman DiGiulian referred to the April 8, 1998, letter that indicated that the County did not feel it was an accessory use.

William E. Shoup, Deputy Zoning Administrator, Zoning Administration Division, stated that the distinction being drawn was to see where was it proper to issue the Non-Rup. He stated that there had been situations like this that had occurred where people violated the standards but it did not mean that the Non-Rup got revoked. A Notice of Violation was usually issued in order to bring them in to compliance.

Chairman DiGiulian asked Mr. Shoup how much time would be given to the applicant in order for them to come into compliance. Mr. Shoup replied saying the applicant was given 30 days in which the applicant took some action. Mr. Shoup stated that part of the problem was the different advertising and coupon mailers and to see if the practice had stopped. All evidence indicated that it had.

Chairman DiGiulian asked if there had been another survey done to see if the vehicles that were coming to the site were patrons or did they come from outside.

Ms. Roberson replied saying there had not been another survey. She stated that the accessory service use provisions are written in a way that stated the use must primarily serve the occupants or the employees of the principal use. The use is there and was available and intended to serve those individuals, not to bar anyone else from using this particular service.

Ms. Roberson stated that the accessory service use provisions were not flawless. She stated that this was the reason the Board of Supervisors had directed the Zoning Administrator's office to look into this issue and to decide whether or not a Zoning Ordinance amendment should be brought forward for their consideration.

Chairman DiGiulian asked if there was any way in which the Zoning Administrator's office could revoke the permit.

Ms. Roberson stated that the only way to revoke the permit was if the applicant continued to violate the provisions.

Chairman DiGiulian asked how could the patronage show that they were oriented towards the people in the park if there was no one using it.

Mr. Shoup stated that it was his belief that part of this goes to the way they were conducting their business. He said if they were not advertising in newspapers or in coupon mailers in order to not direct any advertisement to get off-site customers, they were orienting themselves primarily to the development.

Mr. Hammack wanted to follow up on this to see what criteria was being used to determine that the appellants were subordinate to or serve a principal use, not what criteria they do not use.

Ms. Roberson stated that the Zoning Administrator did not have criteria like that because it was considered a personal service establishment. She said the C-1 District allowed personal service establishment as an accessory service use.

Mr. Hammack stated that this use should be subordinate and serves a principal use and if this was an office complex with non-retail commercial offices like insurance and law offices, how many of these people were going to come down and use the nail salon.

Ms. Roberson stated that the execution of the Certificate of Understanding by the Non-Rup applicant gave implication of subordination. She stated that the regulations are spelled out there and staff relied on good faith that the applicant had made a reasonable business decision that he could have a viable business at this location and still comply with the use limitations and the definition of an accessory service use.

Mr. Shoup indicated that when the Zoning Administrator's office looked at these, their position was that they could not deny something just on its face because they might question whether or not it could be sustained by that particular development. Mr. Shoup stated that he spoke with the County Attorney's Office about this and they agreed that just because there was doubt, did not mean it could be denied unless there was some up-front evidence to the contrary that would lead one to believe that they were not going to orient themselves to the development.

Chairman DiGiulian asked if another survey was taken and the same conclusion was reached as the one done in April that showed that all customers came from off-site, would that then be grounds to revoke the permit.

Mr. Shoup said he did not believe it would. It was based on how the business was oriented and how it was conducting its business.

Chairman DiGiulian commented that if there were no customers from the project it would not be project oriented.

Mr. Shoup stated that here is where the problem with the Ordinance lies. He noted that the Ordinance did not say that it could only or must primarily serve the occupants of the development, it only says that it has to be primarily oriented to serving those customers.

Chairman DiGiulian commented that it was his understanding that once the applicant got the permit, it would have been for good and they could do whatever they wanted to do with it.

Mr. Shoup responded by saying that if there were continuing violations and they were clear violations, staff could go down that road.

Chairman DiGiulian asked Mr. Shoup if this included sign violations and not customers. Mr. Shoup stated that this included sign violations or obvious advertisements that would bring customers in from the outside.

Mr. Hammack addressed a question to staff. He asked if a Domino's Pizza and a McDonald's eating establishments served these occupants and made claim that their patronage is during lunch, and knowing that these establishments would not survive off 34 other buildings and not bring in outside customers, would the Zoning Administrator's office just have them sign a Certificate of Understanding. Mr. Hammack asked about the cars and the traffic that would be generated and whether or not the Zoning Administrator's office would do anything.

Mr. Shoup stated that a fast food establishment would not be permitted.

Mr. Hammack stated that he has seen professional office buildings where there was a small delicatessen which was clearly subordinate to the uses in the building, or maybe a copy operation such as Kinko's, or something that was operating to serve people within that development but didn't advertise and didn't generate, looking at these that showed they contributed primarily to the comfort and convenience of the occupants business, how would the Zoning Administrator make the decision. Mr. Hammack used McDonald's as an example. He asked staff what if a McDonald's came in and signed that Certificate of Understanding, would the Zoning Administrator say it was okay?

Ms. Roberson responded by saying that staff would likely say if they were willing to sign and confirm that they were going to comply with all of the use limitations for an accessory service use at that location, then unless staff had knowledge at the time of the issuance of the Non-Rup that was not going to be the case, staff would likely issue the permit to them. If evidence showed off-site signs advertising that was not directed toward the center itself, in the future, staff would address that as a zoning violation.

Mr. Hammack wanted to know if McDonald's came in and they did not put the signs up, they confined it to the 15 square feet, and they made 99.5 percent of their revenues off of traffic coming in off the street and a .5 percent off the occupants, would they be in compliance with the Ordinance.

Ms. Roberson stated that this illustrated the problem staff had with the language that says you orient yourself to the employees, it did not mean that you could only serve those employees, although the intent was to keep the employees on-site, provide them with services that they could utilize, and reduced trip generation.

Mr. Hammack wanted to know what the phrase "contributes primarily to the comfort and convenience of the occupants" meant. He stated that there was nothing in the statute that related to being negative in terms of that it could not serve people who were not occupants of the complex.

Ms. Roberson stated that this illustrated the problems staff had with the Ordinance versus what the use limitations contained. These use limitations are contained in Article 10 of the Ordinance and, basically, under the use limitations it said "oriented to cater primarily to the residents," the definition required the use to be subordinate to and serve the principal use.

Mr. Hammack stated that even though a nail salon might be retail and served a majority or generated a majority of their business from non-residents or employees of the principal use, there would be nothing the Zoning Administrator would do about it because this would not be considered a zoning violation. He stated that he did not understand why. It seemed like it said, under use limitations that shall be to cater primarily to the residents. So if they were not generating the primary amount of their business, this could be considered dollar volume or some other criteria, from the principal use, they would not be in compliance with this section.

Mr. Shoup responded to Mr. Hammack's question by saying that he made a good point about what the definition said, but then when you go to apply the use limitations you have some different language there and that is the struggle staff goes through with these kinds of uses.

Mr. Hammack stated that this seemed like a good area for the Board to take a look at and revisit and see how these were permitted in a particular area.

Mr. Shoup stated that this would be one of the things the Zoning Administrator's office would be looking at in this amendment.

There were no other questions for staff and Chairman DiGiulian asked if there was anyone else to speak to the appeal.

Donald E. Ellison, President of the Rolling Valley Professional Center, spoke on the behalf of all members of the Rolling Valley Professional Center. He felt the group had been abused by the Fairfax County zoning group who he believed kept expanding this issue. Mr. Ellison felt that the principal or primary uses had been ignored. The absurdity was that if this Rolling Valley Nail Care had kept their doors closed for the first 30 days or at least not had any business in, they could have gotten beyond the appeal time that was given then they could have abused it any way they wanted to. He stated that the Nail Care Center had not come around to any of their businesses and offered to provide nail care for them. He said they could have given the occupants free nail care for the same cost that they went out to advertise to the general public. The Rolling Valley Professional Center members had been totally against the nail care salon. Mr. Ellison stated the occupants bought their buildings with the thought that they were going to be in a professional office complex. He stated that the occupants would not have bought these properties if they had known the County would turn it into a strip mall. Mr. Ellison stated that there is a commercial shopping mall across the street, which at one point, had a nail care in it. Rolling Valley Nail Care Center drove that one out of business. He stated that each time that fault had been found, it took the Zoning Administrator's office several months to respond. Mr. Ellison wanted to be sure that the occupants would not be in conflict with the condominium bylaws or in conflict with the County. He asked the Board to help maintain the dignity of their property. Mr. Ellison implied that the Rolling Valley members were told that if there was a zoning change made by the Board of Supervisors, this would be grandfathered. He urged the Board not to allow the Zoning Administrator's office to get away with their previous actions.

Mr. Hammack asked Mr. Ellison what kind of mix of occupants were there in building.

Mr. Ellison stated that there was one that was considered commercial use, all the others were lawyers, doctors, dentists, retail estate firms, accountants, export licensing companies, wholesale mortgage companies, public editorial groups and things of that nature. There was one other than the Rolling Valley Nail Care, a cleaners that was put in there. He stated that this received strong objections in 1995. Mr. Ellison stated that the occupants tried to get the County to respond to that and they kept saying they were going to get to it. Mr. Ellison stated that they had to complain to the County about the circulars that were being sent out. He stated that the Rolling Valley Nail Care did not need a sign if they were using the occupants that were in the complex.

Mr. Hammack wanted to know if there were covenant restrictions that limited the kind of uses that could be

put on the property.

Mr. Ellison stated that there were covenant restrictions according to C-1. It was believed this meant that it would be just a professional office complex, and that it was the County's interpretation of this that kept expanding.

Harry Bedsworth, 6975 Conservation Drive, Springfield, Virginia, stated that he was the owner of the building. He pointed out what he believed to be flaws in Attachment 9 of the staff report. It stipulated that 95 percent of the people were surveyed; 34.6 percent of the people that signed the survey saying they did not use the facility were men. This reduced the number of people there. Second, there were probably 200 female real estate agents working in that facility which produced any number of potential customers. Mr. Bedsworth stated that he opposed the nail salon going in there, but that he had no choice but to permit them because of the law. He stated that before the lease was executed, his son, who was also his agent, contacted Mr. Ellison in writing in order to obtain comments because he did not want to be involved with problems with the Condominium Board. Mr. Bedsworth stated that he received a response from Mr. Ellison stating in essence that they had no objections if the Board had no objections. He stated that he planned to go forward if the Board did not have any objections. Mr. Bedsworth stated that when the first appeal came up, he wrote or sent a fax to Mr. Ellison stating he did not like the idea of a nail salon in the building. He stated that he knew of nothing that would permit this. Mr. Bedsworth stated that in his fax to Mr. Ellison, he made reference that the cleaners had received a permit which the association thought had been operating for over a year, this was dated 1966 [sic]. He said the fax authorized Michael to execute a lease on 30 August 96. In the paragraph of Mr. Ellison's fax, Mr. Bedsworth stated that the Condominium Board did not aggressively discuss the nail salon tenancy because the belief was that the accessory service use exemption would not be allowed. Furthermore, it was not an issue that should have been addressed by the Condominium Board. All of the owners should have participated in the paramount issue. He stated that the failure of the Condominium Board to act because they did not believe it would happen would seem to be a poor excuse to try to act after the event happened. He said he took all actions necessary to preclude having a nail salon in there. Mr. Bedsworth stated that the nail salon had been good tenants as far as he knew. He stated that based on his findings, he met with the applicant on 30th of August 1966 [sic] and authorized his agent to execute the lease. He stated that if he had not accepted the lease, he sure would be in a position to be blamed for unfair discrimination. He stated that there was no legal reason, or any other reason that he had thought of at the time.

Michael Alan Finn, an architect of the District of Columbia stated that he was appearing as a fellow professional in the architectural engineering business. He stated that he was a friend of John Nguyen who was the brother of the owner. Mr. Finn stated that he read the staff report and visited the site. He presented pictures that showed the sign problem had been taken care of by the Rolling Valley Nail Care and the operation had been discrete in keeping with the condo. Mr. Finn stated that he was in receipt of letters from occupants of the condo who stated that they did indeed use the nail salon. Whether it was a matter of time or word of mouth, people within the complex were definitely using Rolling Valley Nails. Mr. Finn stated that all legalities pertaining to this business had been taken care of. He read a statement from the Zoning Regulations that pertained to a personal service establishment. This type of establishment included barber shops, beauty parlors, and pet grooming establishments as actually being okay. This nail salon seemed to be very close to those other establishments. Mr. Finn stated that this operation started serving the condominium. He stated that there was a petition being brought around for members of the condo to sign which was to be used against Rolling Valley Nail. This petition stated that no personal service establishment accessory use permit is a special exception from the C-1 zoning that covers Rolling Valley Professional Center. This exemption did not allow customers to patronize the personal service business from outside the building. It was Mr. Finn's belief that this was a campaign to intimidate people within the condo complex not to use this facility. Mr. Finn stated that Rolling Valley were good citizens.

Mr. Kelley wanted to know what Mr. Finn meant when he said the nail care started to serve the center more and asked Mr. Finn to give an example of the amount of revenue the salon took in.

Mr. Finn stated that he was not at liberty to discuss the issue of revenue.

Mr. Kelley asked Mr. Finn if it was reasonable to assume that the salon to cover their occupancy expenses from customers coming from the center. Mr. Finn stated that he did not know what the dollar amount was

but it seemed reasonable for them to cover their expenses.

Jane Ann Glass, stated that she worked for JHE Property Management. She stated that in November of 1997, she became the property manager for Rolling Valley Professional Center. Ms. Glass stated that she knew about the nail care center and the ongoing problems. It was her belief that the use needed to be re-examined, and how the use was determined for the different associations and for different structures. She stated that Leisure World existed and everybody in Leisure World has to be 55 years of age. There is a question about accessory use, if it served primarily the association. She stated that around Rolling Valley, there were two female dentists and a female orthodontist. Ms. Glass commented that she would not like to have female dentist putting their hands inside her mouth wearing long plastic nails. She stated that the nail care could probably serve the real estate agencies, but the question would be whether or not the nail care was serving predominantly and primarily the association. Ms. Glass stated that she found it hard to accept the fact that Fairfax County overruled the condominium's by-laws. It was Ms. Glass' belief that if the complex had been made into a professional center, and it is stated in the documents as a professional center, that the County would uphold those rules.

Joseph Nguyen represented the Rolling Nail Care. He stated that the Rolling Nail Care had been opened for more than one year and since that time, he received some notes from the County which stated the nail care was in violation. The first violation had to do with signs but he believed they were not in violation. The sign was recommended by the landlord and was done within the guidelines received from the landlord. This was approved by the County. He stated that the County told him that the sign had to be reduced to 15 square feet and they complied. He said the sign was done over several times but that it was not the fault of the nail salon but some one else's fault. Mr. Nguyen stated that advertisement was done once but before this was done, the landlord authorized it but that it was not done again. He stated that when he was notified that the advertisement was not allowed and the other sign that was set up for the nail salon was expected soon, he asked Mr. Bedsworth, who represented the landlord, if it was okay to put the sign up and Mr. Bedsworth said it was okay. Mr. Nguyen stated that after the sign had been up for a few days, he received a note from the condo association informing him that he was in violation and that the sign had to be taken down. Mr. Nguyen stated that Mr. Bedsworth presented him with papers to sign which stated that the association approved the opening of the nail salon. He stated that once he received the signed lease, he got a permit from the County. It was explained to him by the County that the permit was an accessory use permit which covered the complex. Mr. Nguyen stated that when customers used the salon, no question was asked to find out whether or not they were from the complex or from outside but it was his belief that most of them came from the complex.

There were no other speakers and Chairman DiGiulian called Mr. Philbin to the podium for rebuttal.

Mr. Philbin commented that there was a great deal of frustration that had been generated during this process. He stated that it was understandable when you look at the Notice of Violation letter of April 8, 1997, that was referred to earlier in his testimony. He referred to an earlier comment made by staff. Staff stated that there was a problem with the Zoning Ordinance and did not know how to deal with it. Mr. Philbin said the fact that it required the use to be oriented to and cater primarily for themselves, there may be a problem in quantifying that the Zoning Administrator needed to deal with at some point. He believed the Certificate of Understanding that had been signed by the tenant was understood. Attached to that certificate of use was a clear statement that it contributed primarily to the comfort and convenience of the occupants. He stated that Mr. Nguyen admitted that he would comply with the Ordinance. Whether he read this or understood it, was not clear, but it seemed that was what the Zoning Administrator was asking the Board to accept. Mr. Philbin asked the Board to revoke the Non-Rup or order the Zoning Administrator to continue on with Notice of Violation.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that this was a difficult case dealing with the interpretation of an Ordinance. He said it was difficult, in particular, because he had problems with upholding the Zoning Administrator. Mr. Hammack stated that he believed the nail salon acted in good faith in trying to find a place to perform business even though there may have been some signage violations that they had already addressed and taken care of. He said it was difficult when a motion is made that might affect or close a business; but in reviewing the statute, the accessory service use was supposed to be subordinate to and served a principal

use, and contributed primarily to the comfort and convenience of the occupants business enterprise or industrial use served. He said he did not think that precluded the accessory service use from providing services to third parties, but it seemed that the statute said it should serve the principal use and is subordinate to that and this seemed to be in conflict of the definition of personal service establishment. Mr. Hammack said the bottom line was that there did not seem to be any real criteria for determining how an accessory service use was subordinate to or served a principal use in terms of objective criteria. He said he believed the Zoning Administrator struggled with that issue as they had been candid in testifying and maybe it was going to come back to the County Board for that reason. Mr. Hammack said the Zoning Administrator was charged with the interpretation of the Ordinance and the application of the Ordinance, and the Zoning Administrator did, in fact, interpret the Ordinance on a regular basis when they granted building permits, or when they did interpretations of special permit conditions, or special exception conditions and the overall administration of the office. They are charged with interpreting and applying the Ordinance and they should not be faulted for trying to apply it absolutely fairly, but there was some degree of proportionality or some way it had to be quantified in this kind of a principal use because it was a very small development, 35 units. It seemed hard to picture a nail salon providing services primarily for the occupants in a 35-unit development. He said it might meet the criteria in a very technical way but it did not meet the criteria of the Ordinance in a substantive sense. Mr. Hammack stated that even though there had to be a balance with the definition under personal service establishment would allow a beauty parlor, but what if this was a pet grooming establishment, would that have been permitted in. Would a shoe cleaning and repair shop be allowed in because it technically met a definition. Mr. Hammack stated that he did not believe the nail salon was subordinate to the principal use or being operated primarily for the comfort and convenience of the occupants and the business enterprises within that development. He said he was not sure the nail salon understood what they were signing when they said they agreed to comply with these requirements. For those reasons, Mr. Hammack moved that the appeal of the Zoning Administrators determination of the Rolling Valley Professional Center Condominium Unit Owners Association be reversed and that the issue that the Rolling Valley Nail Care was permitted to operate a personal service establishment as an accessory service use at this location be reversed.

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

Mr. Hammack stated that it was his belief that this kind of a decision is an obligation of Board members. He said it was adverse to the nail salon. He said he had not heard anything indicating that the nail salon had not operated other than in good faith and hoped they would be given adequate opportunity to relocate.

Mr. Shoup stated that the Zoning Administrator's office would work with the nail salon on this.

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Out-of-Turn Hearing Request for Russell A. Bikoff, VC 98-D-052

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the purpose of the application was to add a deck. She said the case was scheduled for July 28, 1998. Ms. Langdon said this was the second variance application the applicant had requested. They had a variance approved in October 1997 for an addition to his house.

Mr. Ribble made a motion to deny the out-of-turn hearing request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

Mr. Kelley stated that when applicants' request an out-of-turn hearing, staff should give them the earliest available date. Ms. Langdon stated that when the applications are accepted and the applicants come in at a later date to move their scheduled public hearing dates, they must keep in mind that openings are not always available. They must also allow time for notices to be prepared and sent out to the applicants and for them to return the notices to the Special Permit and Variance Branch.

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Page 474, May 5, 1998 (Tape 1), After Agenda Item:

Request for Reconsideration of Decision on Special Permit Application,
SP 98-D-052, Roger Q. P. Tarrant & Jane M. Danaher

Mr. Kelley stated that there was nothing new in the request for reconsideration letter that the Board was not aware of when the application was previously denied. He moved to deny the request for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 474, May 5, 1998 (Tape 1), After Agenda Item:

Approval of April 28, 1998, Resolutions

Mr. Hammack moved to approve the April 28, 1998, Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:04 a.m

Minutes by: Ann-Marie Wellington

Approved on: October 6, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 12, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; and, John Ribble. James Pammel was absent from the meeting.

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 475, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NEJDEH ZAROOKIAN, VC 98-Y-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 12015 Vale Rd. on approx. 20,000 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 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. Nejdeh Zarookian, 12015 Vale Road, Oakton, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an addition 9.4 feet from a side lot. A minimum of 5 feet is required; therefore a variance of 5.6 feet was requested.

The applicant, Mr. Zarookian, presented the variance request as outlined in the statement of justification submitted with the application. He said that there was no other place to build the 2-car garage and that the surrounding neighbors had an adequate amount of lot space to build their 2-car garages.

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

Mr. Ribble moved to approve VC 98-Y-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NEJDEH ZAROOKIAN, VC 98-Y-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 12015 Vale Rd. on approx. 20,000 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 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 May 12, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance the required standards for a variance.
3. The location on the narrow lot is the only place for the addition.

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

1. That the subject property was acquired in good faith.

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

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

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

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

- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

- 1. This variance is approved for the location of an attached garage shown on the plat prepared by Richard D. Townsend, dated January 14, 1998, 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. Kelley seconded the motion which carried by a vote of 4-0. Mr. Dively 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 May 20, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KEITH J. AND ANN B. MONTGOMERY, VC 98-D-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 23.2 ft. from the rear lot line. Located at 9412 Tuba Ct. on approx. 15,907 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((4)) 339.

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 D. Curtis, 4109 Edgevale Court, Chevy Chase, Maryland, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 23.2 feet from the rear lot line. A minimum rear yard of 25.0 feet is required; therefore, a variance of 1.8 feet was requested.

The applicant's agent, Mr. Curtis, presented the variance request as outlined in the statement of justification submitted with the application. He said the house was not parallel to the lot line and it overlapped the building setback line by a small sliver which was the reason for the requested variance.

Chairman DiGiulian noted that only one small corner of the addition would overlap.

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

Mr. Kelley moved to approve VC 98-D-015 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEITH J. AND ANN B. MONTGOMERY, VC 98-D-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 23.2 ft. from the rear lot line. Located at 9412 Tuba Ct. on approx. 15,907 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((4)) 339.

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 12, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The lot is an exceptionally pie shaped lot.

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

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

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by John D. Jarrett, dated November 28, 1997, revised by Robert Duane Curtis, 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. Mr. Hammack was not present for the vote. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 20, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 478, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JAMES AND KATHERINE HOWARD, VC 98-P-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard. Located at 1960 Yearling Ct. on approx. 11,291 sq. ft. of land zoned R-3 and HC. Providence District. Tax Map 39-1 ((38)) 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. John Lutostanski of Vika Engineering, 8180 Greensboro Drive, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit a 6.0 foot high fence to remain in a front yard of a through lot. The Zoning Ordinance states that a fence no higher than 4.0 feet is permitted in a front yard. Ms. Langdon noted that adjacent to the subject property was another fence height application which would be heard subsequent to the subject application.

The applicant's agent, Mr. Lutostanski, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lutostanski said the fence provided privacy and there was 3.5 foot grade difference between the public sidewalk and the rear of the house. He said the 6.0 foot fence provided a better buffering and screening from people walking along the sidewalk. Mr. Lutostanski stated the applicants were willing to plant a shrub in the right-of-way and the Virginia Department of Transportation (VDOT) engineering was acceptable to that offer in their maintenance agreement.

Chairman DiGiulian noted a petition signed by six residents of Horse Shoe Court which stated that the fence presented a safety hazard. Mr. Lutostanski replied by stating that the petition pertained to the other fence height application that was to be heard after the subject application. He addressed the petition stating that he had spoken with some of the homeowners and because this was a middle lot no one was concerned about the subject variance, but that the next lot in question was at a corner and the other fence was in the sight distance for VDOT. Mr. Lutostanski stated that the intent was to pull the fence back to its proper location.

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

Mr. Dively moved to approve VC 98-P-021 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES AND KATHERINE HOWARD, VC 98-P-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard. Located at 1960 Yearling Ct. on approx. 11,291 sq. ft. of land zoned R-3 (Cluster) and HC. Providence District. Tax Map 39-1 ((38)) 37. 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 12, 1998; and

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

1. The applicants are the owners of the land.
2. The lot presents an unusual situation with two front yards.

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

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

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of a fence shown on the plat prepared by Franklin E. Jenkins, dated September 10, 1997, submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion which carried by a vote of 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 May 20, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 480, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JUAN CARDENAS, VC 98-P-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in a front yard. Located at 1961 Yearling Ct. on approx. 14,760 sq. ft. of land zoned R-3 (cluster) and HC. Providence District. Tax Map 39-1 ((38)) 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. John Lutostanski of Vika Engineering, 8180 Greensboro Drive, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit a 6.0 foot high fence to remain in a front yard of a

through lot. The Zoning Ordinance states that a fence no higher than 4.0 feet is permitted in a front yard.

The applicant's agent, Mr. Lutostanski, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the fence is 20 feet into the right-of-way. The proposal was to move the fence back to the applicant's property line to ensure that adequate sight distance is met. Mr. Lutostanski said if necessary, a portion of the fence could be lowered to 4.0 feet in height to further ensure that sight distance would be met.

Mr. Hammack asked who constructed the fence. Mr. Lutostanski deferred to the applicant, Mr. Cardenas, for a response to the question. Mr. Cardenas replied that he had built the fence and that it was approved by the builder and was in control of the community association.

Mr. Hammack asked Mr. Cardenas whether the fence on his property or on community association property. Mr. Cardenas replied that the fence was on his property but that there was a portion in the right-of-way. He said there was a large tree on the boundary line and he told the contractor to go around the tree in order to maximum the amount of space captured by the fence. He said at the time he had asked VDOT whether they would maintain that yard and they replied negatively. Consequently, Mr. Cardenas enclosed that part of the yard, which he said was a mistake. Mr. Cardenas said he would be perfectly willing to pull the fence back and make it part of his application. He added that he would reduce that portion of the fence which constituted any sight problem.

Mr. Hammack asked staff whether the Board had the correct party in the matter and was it advertised correctly since part of the fence was not on the applicant's property. Ms. Langdon replied that staff had advertised correctly and said that the subject plat showed the fence relocated to the applicant's property.

Mr. Hammack asked whether the community association was in violation. Ms. Langdon replied that there was a violation issued by Zoning Enforcement and a copy was included in Appendix 4 of the staff report.

Chairman DiGiulian called for speakers.

Lavonne Rolincik, 8427 Horse Shoe Court, came forward to speak in opposition to the application. She said it was difficult for her to appear before the BZA to speak in opposition to her neighbor's application because she respected their need for privacy. However, she expressed concern that there was no guarantee whether it would be safe if the entire fence remained at 6.0 feet. Ms. Rolincik said if there was a way that a portion of the fence could be lowered, that would be acceptable.

Mr. Cardenas gave a rebuttal stating that he did not object to lowering the fence to 4.0 feet in height. He was waiting for clarification from the BZA as to what was required and then they would relocate the fence and lower a portion of the fence to satisfy the neighbors.

Mr. Dively asked what portion of the fence was to be lowered. Mr. Lutostanski revealed the answer to Mr. Dively's question by referring to the plat.

In response to Mr. Dively's question, Mr. Lutostanski replied that there was no way to determine whether the fence would meet sight distance requirements by just moving it back.

Mr. Ribble asked if the fence was moved back and lowered to 4.0 feet would it meet sight distance requirements. Mr. Lutostanski answered affirmatively.

Mr. Hammack noted that the applicant could have a 4.0 foot fence in the front yard as a matter of right, without needing a variance.

Mr. Hammack moved to approve-in-part VC 98-P-026 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998. The Board of Zoning Appeals requested that the applicant provide revised plats reflecting the new fence height and compliance with the Virginia Department of Transportation's (VDOT) sight distance requirements within 30 days of the public hearing.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JUAN CARDENAS, VC 98-P-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in a front yard. Located at 1961 Yearling Ct. on approx. 14,760 sq. ft. of land zoned R-3 (cluster) and HC. Providence District. Tax Map 39-1 ((38)) 36. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 12, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the requirements for a variance.
3. The applicants are entitled to privacy in their backyard.

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

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

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

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

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

1. This variance is approved for the location of a fence shown on the plat prepared by Franklin E. Jenkins, dated June 8, 1998, submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion which carried by a vote of 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 August 4, 1998, the date that the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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Page _____, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NEIL B. & DOROTHY B.A. WORDEN, VC 98-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from side lot line. Located at 7931 Bolling Dr. on approx. 18,910 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((10)) 43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Durosko, 5799K Burke Centre Parkway, Burke, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow the enclosure of an open porch. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 3.6 was requested.

The applicant's agent, Mr. Durosko, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the porch was built prior to the Ordinance and was an original part of the house. Mr. Durosko said the size of the dwelling would remain unchanged and the addition would not be detrimental to the neighbors.

In response to Mr. Ribble's question, Mr. Durosko stated that the house was built in 1949.

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

Mr. Ribble moved to approve VC 98-V-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NEIL B. & DOROTHY B.A. WORDEN, VC 98-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from side lot line. Located at 7931 Bolling Dr. on approx. 18,910 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((10)) 43. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 12, 1998;

and

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

- 1. The applicants are the owners of the land.
- 2. The house and the concrete slab were built prior to the Ordinance.
- 3. Only one corner of the lot requires the variance because of the converging lot lines towards the rear of the property
- 4. The house sited on the lot is at an angle which causes the need for a variance.

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

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

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

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

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

- 1. This variance is approved for the location of an enclosed porch addition shown on the plat prepared by Kenneth W. White, dated September 8, 1997, 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 enclosed porch addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice,

thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 20, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 485, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARK J. STADSKLEV, VC 98-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 6647 Hallwood Ave. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((5)) 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. Mark Stadskev, 6647 Hallwood Avenue, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow the construction of a garage and second story addition. The Zoning Ordinance requires a side yard of 10.0 feet; therefore, a variance of 6.5 was requested. Ms. Schilling stated that the BZA denied a variance request for the subject property on October 28, 1997, but granted a waiver of the one year waiting period for refileing. The previous variance request was for the construction of a garage and second story addition 0.9 feet from the side lot line.

Mr. Stadskev presented the variance request as outlined in the statement of justification submitted with the application. He thanked the BZA for their waiver of the one year waiting period for refileing. Mr. Stadskev said he incorporated the comments and criticisms from his previous application in the subject request. He said the addition would not be detrimental to the adjacent neighbors. Mr. Stadskev presented photographs and drawings to the BZA for review.

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

Mr. Kelley said that the applicant had gone to pains to satisfy the BZA and he moved to approve VC 98-D-019 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 5, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK J. STADSKLEV, VC 98-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 6647 Hallwood Ave. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((5)) 8. 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 12, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of an attached garage and second story addition shown on the plat prepared by Kenneth W. White, dated May 13, 1997, as revised through December 9, 1997, 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 and second story addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

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

Mr. 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 May 20, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 487, May 12, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MCDONALD'S CORPORATION, VC 97-P-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be located less than 20.0 ft. from rear lot line and parking spaces less than 10.0 ft. from front lot line. Located at 7101 Leesburg Pi. on approx. 21,818 sq. ft. of land zoned C-8 and HC. Providence District. Tax Map 40-3 ((1)) 108A. (Concurrent with SE 97-P-052).

Susan Langdon, Chief, Special Permit and Variance Branch, noted a letter requesting deferral. She said this application was concurrent with a special exception and was scheduled to go before the Board of Supervisors. Ms. Langdon said she had discussed a deferral date of July 7, 1998, with the applicant.

Mr. Dively moved to approve the deferral of the subject application to the morning of July 7, 1998. Mr. Ribble and Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 487, May 12, 1998, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS AND VERONICA BENSON, WOODLAWN KENNELS, INC., A 1998-LE-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that expansion of a nonconforming use, a dog kennel, is not in conformance with the approved Special Permit # 14117 nor with Par. 1 of Sect. 15-103 of the Zoning Ordinance. Located at 8340 Richmond Hwy. on approx. 14,418 sq. ft. of land zoned C-8. Lee District. Tax Map 401-4 ((1)) 4.

Chairman DiGiulian noted that an Intent to Defer had been approved by the BZA for the subject application to be scheduled on July 28, 1998. Susan Langdon, Chief, Special Permit and Variance Branch, concurred.

Mr. Dively made a motion to confirm the deferral. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 487, May 12, 1998, (Tape 1), Scheduled case of:

9:30 A.M. GERALD COOPER, A 1997-MA-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the service station use has been discontinued and therefore, the continued sales and installation of tire constitutes the operation of a vehicle light service establishment without required special exception approval. Located at 5919 Columbia Pi. on approx. 35,500 sq. ft. of land zoned C-5, SC and HC. Mason District. Tax Map 61-2 ((1)) 120.

Chairman DiGiulian noted the request for withdrawal. Susan Langdon, Chief, Special Permit and Variance Branch, read notes from William Shoup, Deputy Zoning Administrator, stating that the outstanding issue was the need to install a gasoline pump with two dispensers and that action had occurred on May 11, 1998, which resulted in the service station use being reestablished and the issue in appeal resolved. The Zoning

Administrator's office concurred with the withdrawal request.

Mr. Ribble moved to accept the withdrawal request. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 488, May 12, 1998, (Tape 1), Action Item:

Request of Out-of-Turn Hearing
Langley Club, Inc., SP 98-D-019

Mr. Dively moved to deny the request for an Out-of-Turn Hearing. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley voted nay and Mr. Pammel was absent from the meeting.

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Page 488, May 12, 1998, (Tape 1), Action Item of:

Request for Reconsideration
Jacquelynn Sutphin, SP 98-Y-007

Mr. Dively moved to deny the Request for Reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 488, May 12, 1998, (Tape 1), Action Item:

Approval of May 5, 1998 Resolutions

Mr. Dively moved to approve the Resolutions of May 5, 1998. Mr. Kelley and Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 488, May 12, 1998, (Tape 1), Action Item:

Approval of April 21, 1998 Minutes

Mr. Dively moved to approve the Minutes of April 21, 1998. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Discussion of Paint ball Application
(There was no application number at time of discussion)

Chairman DiGiulian asked staff for a status report on the paint ball application. Susan Langdon, Chief, Special Permit and Variance Branch said that the applicant had submitted changes to the plat late the previous week and the applicant was approved to use the plat. She said there was a possibility that the application would be accepted during this week and if so the application could be scheduled for the last week in July or early August.

Chairman DiGiulian stated that the BZA had previously set a date for this application to be heard earlier. Ms. Langdon said the BZA had tentatively scheduled a date of June 30, 1998, and that staff had started the notices for the June 30, 1998, meeting. Ms. Langdon suggested scheduling the application at a later date to meet proper notice requirements and the BZA wanted to hear the application sooner. Ms. Langdon also explained that the subject application would need to be staffed.

Page 489, May 12, 1998, (Tape 1), After Agenda Item, continued from Page 488)

Mr. Kelley moved that the BZA maintain the date of June 30, 1998. Ms. Gibb and Mr. Hammack seconded the motion which carried by a vote of 6-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:56 a.m.

Minutes by: Regina Thorn

Approved on: October 20, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 19, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy E. Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 8:05 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 491 May 19, 1998, (Tape 1), Scheduled case of:

8:00 P.M. BRENDA LUWIS, BRIAN LUWIS & SATYENDRA SHRIVASTAVA, VC 98-D-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and an outlot, proposed lots 7, 8 and 12 having a lot width of 5.33 ft. Located at 962 Towlston Rd. on approx. 5.29 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 12 pt and 19-2 ((4)) B.(Deferred from 4/14/98 for notices)

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicants' notices were not in order and after speaking with the applicant, staff recommended a deferral date of July 21, 1998 at 8:00 p.m. Responding to Mr. Ribble's question, Ms. Langdon explained that the applicant had amended the application to add land area and another lot and, it was too late to renotify adjacent property owners.

There being no objection, Mr. Hammack moved to defer the public hearing to July 21, 1998 at 8:00 p.m. The motion was seconded by Mr. Dively and carried by a vote of 7-0.

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Page 491 May 19, 1998, (Tape 1), Scheduled case of:

8:00 P.M. FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 for a community recreation facility to permit site modifications, building additions, and modifications to the development conditions. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Concurrent with VC 98-H-018).

8:00 P.M. FOX MILL WOODS SWIM AND TENNIS CLUB, INC., VC 98-H-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 3.0 ft. from side lot line. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Concurrent with SPA 81-C-093-04).

Before the Chairman called the applicant's agent to reaffirm the affidavit, Mr. Hammack, noting the large number of speakers to present testimony, moved that the time allowed for persons representing themselves and not an organization be limited to two minutes. Mr. Ribble seconded the motion which carried unanimously with a 7-0 vote.

Chairman DiGiulian then instructed the audience that the makeup of the Swim Club's Board of Directors was an issue that the Board does not consider and that testimony must be limited to land use issues.

Chairman DiGiulian called the applicant to the podium and asked if the affidavits for the concurrent applications before the Board of Zoning Appeals (BZA) was complete and accurate. Tracy Steele Scileppi, Esquire, with the firm of Walsh, Colucci, et al, in Arlington, replied that they were.

Julie Schilling, Staff Coordinator, ZED/OCP, made staff's presentation, as contained in the staff report dated May 12, 1998. She explained that, subsequent to the staff report's publication, staff received revised plats with suggested development conditions that included a phasing plan describing the addition of parallel parking spaces within the pipestem driveway, suggested conditions to allow off-site parking on adjacent streets, and other conditions which represented commitments made to residents during citizen meetings. She stated that, although staff had no objections to most of the suggested changes and development conditions, the proposal to install parking in the pipestem driveway was not supported by staff as there was insufficient time to adequately review the layout and there was the potential for creating congestion on the site. Ms. Schilling also noted that to allow members to park along adjacent streets was not supported

supported because of the possibility of negative impacts to surrounding residents during swim meets or other high use times. She explained that the applicant's phasing plan proposed to delay construction of a larger parking lot which would accommodate pool members when present on-site parking did not meet Ordinance requirements. Ms. Schilling noted that the adoption of staff's May 19, 1998 development conditions, contained in Addendum I, required construction of the larger parking lot in the first phase which required that all parking be on-site and deleted the proposition for parallel parking spaces in the pipestem driveway. Ms. Schilling stated that staff recommended approval of SPA 81-C-093-4 with the adoption of the May 19, 1998 development conditions. She noted that if the Board chose to approve the concurrent variance application, the development conditions for Variance, VC 98-H-018, were contained in Attachment 2 of the Addendum.

Tracy Steel Scileppi, Esquire, explained the applicant's phased plan for the community supported pool and tennis courts. She informed the Board that the facility was a private, non-profit organization run by volunteers with an elected Board of Directors. She explained that the pool was conceived in 1976 as a walk-to facility whose rules, still applicable, stipulated that the facility's limited parking was to serve those of its members living outside the Fox Mill Woods development. She added that the current membership was 300. She pointed out that this special permit amendment was the first since 1976 that involved any new structures, amenities or improvements; that the increased facility was very modest as were the requests proposed by the applicant; and that the facility's master plan layout, conceived by an architect, sought to utilize the natural terrain, preserve the park-like setting and mitigate impacts on neighbors. She stated that the site was unique in that along three sides of the pool the Park Authority was an adjacent neighbor and provided a substantial wooded buffer. She explained the design of the parking lot's enlargement and that it would specifically not be located any closer to lot 202. Ms. Scileppi stated that the application conformed with the Ordinance's general standards for granting special permits; that the use was in harmony with the Comprehensive Plan and the applicable R-2 Cluster Zoning Ordinance regulations; and that the proposed use was in harmony with and would not adversely effect the use or development of neighboring properties. She pointed out the site's enhanced screening, buffering and landscaping and that the site's master plan would increase property values and use of the pool. Ms. Scileppi requested that the applicant not be required to enlarge the parking lot until the pool was enlarged and to be permitted to continue off-site parking, as necessary, until the parking lot was enlarged. She explained the necessity for off-site parking during high use times such as swim meets, holidays and after-hours parties, clarifying that specific exclusions from the on-site parking requirement were needed. Ms. Scileppi pointed out the property's extraordinary characteristics, the site's shape and inward sloped topography and the existing structures' locations set immediately upon the southern lot line which limited the pool deck's expansion to foot traffic only. Ms. Scileppi reiterated that the applicant be permitted to phase the construction of the pool, snack bar and pavilion upon their own time frame as noted in Tab 1 in the binder she distributed and which she, hastily, had revised in response to staff's proposed development conditions. She responded to questions from the Board regarding the percentage of members within and residing outside the Fox Mill Woods subdivision, the importance of keeping the pool viable, and the hope that the facility's improvements would increase membership from the Fox Mill Woods community.

Chairman DiGiulian called for speakers in support of the application.

Mr. Bill Jordan, 2630 Black Fir Court, Reston, spoke in support, stating that the facility would be improved for both swimming and tennis without increasing the membership; the fact that the Fox Mill Woods Board of Directors chose, out of three options for enlarging the parking area, the plan with the least environmental impact as the fewest number of trees would be removed; and to give credit to the volunteers who had gone to extraordinary efforts to communicate exactly the club's proposed changes to the community. Mr. Jordan cautioned the Board about a self-appointed group, "The Friends of the Pool", FOP Group, who opposed the changes and whose literature, a "Facts Sheet", was distributed that erroneously listed misconstrued information or untruths regarding requested environmental waivers and transitional screening issues which had influenced a number of speakers present that night who opposed the application.

Mr. John Schiavo, 2609 Mountain Laurel Place, Reston, identifying himself as a club member and past Board Treasurer, explained that in the early 1990's the pool's condition and age warranted future planning for renovation and active solicitation for pool membership was begun to fund the plan. He added that considerable time, effort and money was spent to develop the facility's master plan to make the pool safer, more attractive and pleasant and he requested the BZA's favorable recommendation for these modest,

reasonable proposals.

Mr. Mark Lindsey, 2636 Black Fir Court, Reston, urged the Board's support for the applications, as presented, especially the club's proposed parking arrangements. He stated that the club's improvements would maintain property values and an attractive and viable facility was critical for sustaining its financial membership support.

Mr. Tom Quarnstrom, 2523 Spanish Moss Court, Reston, presented photographs which depicted the club's substantial and beautiful wooded buffer. He explained the pavilion's design, placement, and use.

Mr. Alan Friedman, 10905 Hunter Station Road, Vienna, identified himself as an "outside" member of the club having moved outside of the Fox Mill Woods development in order to better accommodate his handicapped son. He encouraged the Board's support of the club's improvements, listing the club's 20-year "good neighbor" policy; the fact that the planned changes would improve the quality of the facility and add to the community and club's value; and the necessity for safety and convenience that the improvements to the parking area afforded with the turn-around area and handicap spaces.

Mr. Robert Angel, 11828 Blue Spruce Road, Reston, informed the Board that for ten years he has been an active swim and tennis member and has noticed the dramatic changes with the club's growth, the tennis club's in particular. He affirmed that there was a dire need for a tennis pro shop. He pointed out that notice of this plan and the changes was visibly posted at the club a year ago, that he heard no criticism then, and he was bewildered why there was any second guessing now.

Mr. Cliff Deckard, 10902 Berryland Court, Oakton, informed the Board that the Northern Virginia Swim League consisted of 106 swim teams; that the teams were from other community run swim clubs; and that Fox Mill Woods hosts the swim meets only six days a year and those were the times that the parking overflowed onto the streets. He pointed out that the requested modifications would not increase membership or traffic but would improve their facility. Mr. Deckard requested the Board's approval of the applications.

Mrs. Brenda Root, 2642 Black Fir Court, Reston, pointed out the benefits of the club's tennis activities keeping the children engaged in meaningful and worthwhile exercise and competition. She asked that the Board approve the club's requested improvements.

Mrs. Marian Kendrick, 2656 Black Fir Court, Reston, informed the Board that the availability of the club's activities had factored in her family's decision to buy a home in the Fox Mill Woods neighborhood. She noted the family-oriented atmosphere of the community and the importance of the improvements to the facility to make the club more user friendly as she related the difficulties she had endured when she would supply swim meet activities by hand carrying items from her car to the pool. Mrs. Kendrick stated that the snack bar and tennis pavilion would be a much appreciated and necessary amenity for the club's use and urged the Board to approve the special permit.

Mrs. Ellen Hirsch, Fox Mill Woods resident since 1986, stated that the use of the pool was important to her family and that the requested improvements were warranted. She pointed out that the parking lot's enlargement would address the safety issue and that the club's board members had done a tremendous job of informing people of the proposed changes and should be commended.

Miss Michelle Gesker, 2658 New Aspen Court, Reston, stated that the pool team has positively influenced and inspired people and the improvements would only enhance the experience. She urged the approval of the improvements, stating that they were needed as the club's use and membership grows.

Miss Rebecca Snaider, 2631 Wild Cherry Place, Reston, was a member of the swim team and said that the activities generated were positive and healthy. She noted that her home was the closest residence to the pool and neither she nor her parents believed the pool improvements would negatively impact their neighborhood.

Mr. Craig Howland, 12944 Oak Lawn Place, Herndon, noted that the pool was in existence for 20 years before microwaves were used, that there had been virtually no improvements to the facility since that time,

and that the requests were needed. He urged the Board's support.

Mr. Jim Leeds, 11815 Quarter Horse Court, Oakton, identified himself as an "outside" member of the club whose family has enjoyed the activities since 1993 and had joined the Fox Mill Woods club because of its beautiful setting. He requested the Board's favorable consideration because the request was reasonable.

Mr. Brian Tenenhaus, 11825 Blue Spruce Road, Reston, was formerly a long-time tennis club member and now was an instructor. He pointed out the need for the pro shop, the snack bar, and the protection of the pavilion for spectators as these amenities addressed and provided safety, convenience, and comfort issues. He urged the Board's support.

Miss Monica Lins, 2617 Mountain Laurel Place, Reston, said that she was a member of the swim team. She pointed out the need for the pool's improvements as well as the parking lot's improvements for safety issues.

Mr. Gregory Dolson, 2809 Bree Hill Road, Oakton, pointed out the importance of the swim team activities for the needs and benefits of children both physically and socially. He stated that if the pool failed, because of no plan for renovation, the children would be affected the most. He applauded the club's governing body for its vision in planning for this necessary renovation, stating that the proposed improvements made economic sense. Mr. Dolson submitted that the Board's approval of the facility's master plan was the only responsible thing to do.

Mrs. Mary Jo Huycke, 11300 Hunt Farm Lane, Oakton, said that she was pleased that the facility's master plan continued the aesthetic and secluded environment which initially had attracted her family to become members. She noted that the improvements, especially the parking lot, as it was a matter of safety, were warranted and would not increase the membership but only improve the facility for its members. Mrs. Huycke called the Board's attention to the amount of time and effort expended by the Fox Mill Swim Club's Board in creating the master plan and urged that the BZA support it.

Mr. George Milme, 2930 Leefield Drive, Herndon, said that Fairfax County was noted for its exceptional public facilities and that the Fox Mill Woods Swim Club was only seeking responsible means to reasonably improve its facilities for its members.

Mr. Harry Lins, 2617 Mountain Laurel Place, Reston, commented on the major role the Club played in his community and family's life as he and each of his five-member family was involved with club activities. He compared other club's amenities that he had observed while attending various swim meets over the years acknowledging that, although Fox Mill's Club was beautifully screened and buffered, the facility itself lacked necessary safety features and accommodations. Mr. Lins requested the Board's approval of the club's master plan because it was intrinsically reasonable, prudently well-designed, and considerate of all interested parties.

Mrs. Karin Tenenhaus, 11825 Blue Spruce Road, Reston, said that, twenty years ago, she had solicited pool memberships and has been involved in the club's activities ever since. She explained the difficulties of providing refreshments, etc., during swim meets because everything must be hand-carried from the car and commended the club's Board of Director's for their foresight in the provision for a much needed storage area and/or snack bar.

Mr. Bob Root, 2643 Black Fir Court, Reston, noted the close proximity of the pool to his home and stated that he welcomed the noises he heard during the swim meets as it was a happy, healthy sound of children engaged in constructive, family-oriented activities. He said that the club did an exemplary job of notifying the community of its proposals, all of which were warranted and reasonable. Mr. Root affirmed his approval of the club's proposed improvements which would keep the facility viable and competitive.

Mr. Tim Jones, 12240 Westwood Hills, Herndon, pointed out that the requested improvements were not visible from the residences, and would not change the activities or increase the club's membership. He stated that the improvements were modest and had no adverse environmental or neighborhood impact.

Mr. Bill Byrne, 12925 Oak Lawn Place, Herndon, representing many residents who live outside of the Fox

Mill Woods development, voiced their support of the community pool's requested improvements, stating that their property values would increase. He said his children are members of the swim team and he had noticed many other facilities during swim meets and that it was apparent that Fox Mill Wood's facility was not up to the level of many other community pools in the County. Mr. Byrne stated that the improvements were minimal and he urged the Board's support.

Mr. Les Starck, 11796 Grey Birch Place, Reston, said he was on the Fox Mill Wood's Swim and Tennis Club Board. He encouraged the BZA's adoption of their proposed master plan in its entirety as it was a thoughtful plan that met the diverse needs of the pool's membership while preserving the natural beauty of the facility. He clarified that a "Fact Sheet" that had been circulated by a group who were detractors of the club's master plan, called the Friends of the Pool, was composed of erroneous information which only served to mislead and agitate people. Mr. Starck affirmed that the club would preserve the facility as a resource and protect the environment.

Ms. Barbara Lowry, 2635 Wild Cherry Place, Reston, identified herself as a board member of the pool and voiced her support of the pool's facility. She related the club's fiscal and financial integrity by quoting its current bottom line as printed in the financial statement and pointed out that the Fairfax County Park Authority had given the land for the neighborhood to build the club. Ms. Lowry noted that Fox Mill Woods had no homeowners association and no requirement to join the club, that membership was strictly voluntary and that if the club became insolvent, it was revert back to the Park Authority. She stated that the renovations would keep the club viable and would better meet the needs of its members.

Mr. Peter Kendrick, 2656 Black Fir Court, Reston, said that he supported the proposed modifications and that the club had been a good neighbor over the years, that the facility was aging and necessitated bringing it up to current standards. He said that he was impressed with the integrity of the previous speakers' testimony and their fair and accurate statements. Mr. Kendrick stated that the club had been a good neighbor over the years.

Chairman DiGiulian called for speakers opposed to the application.

Mr. Mitchell Ross, said that he was a member of the club but was opposed to the club's expansion because he believed it would not correct the club's problem with outside membership. He noted that the improvements were a major investment and a substantial expansion that would risk the pool's survival if the expansion failed. Mr. Ross pointed out that the parking lot was small because it had not been designed to accommodate outside members and that Fox Mill Wood's residents would walk to the facility and not have to use automobiles. He suggested limiting the pool's membership to 250, with a ceiling of 300, with the priority for membership to residents of Fox Mill Wood's development.

Mr. Jeff Shinrock, 2632 Black Fir Court, Reston, said that he was a member, that his three children were on the swim team, and that he represented a number of neighbors who, at this point in time, opposed the application but were willing to compromise. He explained that his group was dismayed that there was little information circulated regarding the proposed improvements, although the club's board held a meeting with them last May during which issues of security and safety were discussed. Mr. Shinrock stated that although there were originally 18 issues which his group wanted addressed, there were three issues which warranted some sort of compromise: the plan's phasing in relation to the pool's improvements; an access easement through their development to the Fox Mill District Park and; the potential security problems with the tennis pavilion. (A copy of these three issues is contained in the file.) Mr. Shinrock said that there was insufficient time to review the latest development conditions and that if the applicant was unable to address their three issues, that the application should be deferred.

There being no further speakers, Chairman DiGiulian called upon Ms. Scileppi for rebuttal.

Ms. Scileppi maintained that the application increased security capability, improved handicapped access to the pool and modernized the facility and that the needs of the membership and the subdivision were met. She stated that the parking lot's improvements would be included with the Phase I construction, as staff recommended, but submitted that the other phases of improvement should be decided by the facility's Board of Directors. Ms. Scileppi stated that it was not beneficial for the pool membership to cap its numbers, pointing out that priority was given to Fox Mill Woods residents. Ms. Scileppi listed the numerous

mailings to keep the communities informed of its proposals and the many meetings that were held with residents noting that many suggestions to the board were considered and made policy. She briefly addressed each issue raised by Mr. Shinrock and explained the board's remedy.

Responding to Mr. Hammack's question, Ms. Schilling briefly explained staff's view on the modified, proposed development conditions which were distributed that night and although there was not enough time to adequately review them, staff maintained the position that it can not support parallel parking in the pipestem driveway, that off-site parking was prohibited, that the larger parking lot's construction must be in Phase I, and that there was limits on the parking lot's and security lighting. She advised Mr. Kelley of staff's position regarding special permit uses and the issue of off-site parking.

Discussion followed among Board members regarding off-site parking issues.

There being no further questions or comments from the Board, Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that it was not appropriate for the Board to dictate an access easement through the park property and that many issues raised that night were not land use issues and, therefore, were not within the Board's purview to resolve. Mr. Hammack suggested a method to phase construction and submitted language modifying Development Condition #9 to allow off-site parking only during swim meets. He then moved to approve SPA 81-C-093-4 which was seconded by Mr. Pammel.

Discussion followed among the Board members concerning the importance of maintaining the club's viability and the undesirable precedent of trying to establish rules for off-site parking which, it was deemed, were unenforceable. Mr. Dively then moved to amend the current motion and adopt the applicant's proposed language, as written, for Development Condition #9. The amended motion was seconded by Mr. Pammel but failed by a vote of 4-3 with Messieurs DiGiulian, Kelley, Ribble, and Ms. Gibb opposed. Chairman DiGiulian then called for a vote on Mr. Hammack's original motion which stipulated that all parking must be on-site, as written in Appendix 1, dated May 12, 1998, of the Staff Report dated May 12, 1998.

Mr. Hammack moved to approve SPA 81-C-093-4 for the reasons set forth in the Resolution, subject to the Development Conditions contained in Appendix 1 of the Staff Report dated May 12, 1998.

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

FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 for a community recreation facility to permit site modifications, building additions, and modifications to the development conditions. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Concurrent with VC 98-H-018). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 19, 1998; and

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

1. The applicant is the owner of the land.
2. The proposals are reasonable.
3. The facility's improvements will have minimal impact on the neighborhood.

Page 497, May 19, 1998, (Tape 1), FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-04 and VC 98-H-018, continued from Page (96)

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-006 and 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2634A Black Fir Court (5.12 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by J. Monaco and Associates P.C. dated October 1997, as revised through May 18, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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 number of family memberships shall not exceed 300.
6. The hours of operation for the tennis courts shall be limited to:
 - 8:00 a.m. to 10:00 p.m., May 1 through October 1; and
 - 8:00 a.m. to 8:00 p.m., October 2 through April 30.

The hours of operation for the swimming pool shall be limited to:

 - 8:00 a.m. to 9:00 p.m., May 1 through Mid-June (first full week after County schools are dismissed)
 - 7:30 a.m. to 9:00 p.m., Mid-June through July 31; and
 - 8:00 a.m. to 9:00 p.m., August 1 through October 1
7. No children under the age of 12 shall be permitted to use the pool prior to 8:00 a.m.
8. No whistle, bell, buzzer, or starter clock shall be used prior to 8:00 a.m.
9. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. A minimum of 54 parking spaces shall be provided in the location shown on the special permit plat, and shall be provided with Phase 1. The parallel parking shown on the pipestem driveway is not approved and shall not be constructed. All parking shall be on-site.
10. Lighting on the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures for the tennis courts shall not exceed twenty (20) feet, while the combined height of the light standards and fixtures for the parking lot shall not exceed 12 feet. The height of all security lights mounted to buildings and fences shall not exceed 12 feet.

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to ensure that the lights are focused directly onto the property.

The use of the tennis court lights shall be regulated by a key control system and an automatic shutoff device to insure the lights are automatically cut off at 10:00 p.m. There shall be strict compliance with this Development Condition. Failure to comply with the Development Condition shall subject the applicant to discontinuance of the use of the lights in conjunction with the tennis courts.

11. After-hours parties for the Fox Mill Woods Swim and Tennis Club shall be governed by the following:

Limited to six (6) per season,

Limited to Friday, Saturday and pre-holiday evenings,

Week night parties limited to three (3) per year with written proof that all contiguous property owners have agreed,

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 extended-hour party or for the first one at the beginning of a swim season,

Requests shall be approved only if there are no pending violations of the Conditions of the Special Permit. Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

12. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during preseason pool cleaning, the applicant shall ensure that the chemicals are neutralized prior to discharge by using the following guidelines for all pool discharge materials:

All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged, and filtered prior to discharge.

Pool water shall be discharged slowly at a constant rate to prevent adverse impacts to the sanitary sewer drain and/or receiving streams.

13. Landscaping and existing vegetation along all lot lines shown on the Special Permit Plat, as modified by these development conditions, shall be deemed to satisfy the transitional screening requirements. Prior to site plan approval, a landscape plan shall be submitted for review and approval of the Urban Forestry Branch of DEM, and additional landscaping in the following areas:

Planting of the type and intensity of Transitional Screening Type I within the crosshatched area shown on the special permit plat shall be provided. Existing vegetation may be used as transitional screening supplemented with evergreen plantings subject to the review and approval of the Urban Forestry Branch of DEM.

Supplemental vegetation in addition to that shown on the plat along the pipestem driveway shall be planted to provide a visual screen of the travelway from surrounding residential properties.

14. Barrier requirements along all lot lines shall be waived.
15. A walkway shall be maintained from Black Fir Court to the facility, as shown on the Special Permit Plat.
16. Unauthorized use of the facility after its approved hours of operation shall be prohibited. The applicant shall install a security gate or chain at the entrance to the facility in addition to the employment of a security guard as required to ensure compliance with this provision.
17. No property outside of the limits of clearing and grading shown on the plat will be utilized for fill elsewhere on the property.
18. The applicant shall construct the improvements shown on the approved special permit plat, as modified by these conditions, in a single phase or in accordance with the following:

Phase 1- The enlarged parking lot, interior parking lot landscaping, transitional screening along lots 197, 201, 202, the stormwater management facility and culvert, (if stormwater management facilities are not waived or modified), landscaping and pedestrian trail shall be constructed, subject to the review and approval of DEM and the Urban Forestry Branch of DEM. In addition, the security gate, speed bumps, pedestrian trail from Black Fir Court to the pedestrian trail along the northern side of the parking lot, and landscaping along the entrance driveway shall be installed within 180 days of approval of the application.

Phase 2- The pool, wading pool, and deck enlargement, plantings around the pool area and in front of the clubhouse shall be constructed, subject to the review and approval of DEM and the Urban Forestry Branch of DEM.

Phase 3- The pavilion to the south of the tennis courts shall be constructed. The landscaping shown on the plat adjacent to the west side of the tennis courts shall be installed prior to the issuance of a Non-Residential Use permit for the pavilion shown on the plat, subject to the review and approval of the Urban Forestry Branch of DEM.

Phase 4- The snack bar/tennis pro office.

The covered wooden deck and terraced seating may be constructed at any time after issuance of a Non-Residential Use Permit for Phase 2.

Phases 2, 3 and 4 may be constructed with Phase 1 or independent of each other in accordance with the preference of the applicant.

19. A tree preservation and planting plan shall be submitted to the Urban Forestry Branch of DEM for review and approval at the time of site plan review for phases 1 and 2, and shall be implemented. This plan shall depict the limits of clearing and grading as delineated on the special permit plat and shall provide for the preservation of all areas shown outside of the limits of clearing to be preserved. In addition, the applicant shall locate and preserve, where feasible, to the maximum extent possible, trees located within the limits of clearing and grading, subject to the review and approval of the Urban Forestry Branch of DEM.
20. The pavilion structure adjacent to the tennis courts shall be an open- air structure and shall be unlighted.

- 21. The applicant shall institute a grounds policing policy to ensure that litter is disposed of at least once per week.
- 22. The applicant shall coordinate with the owners of lots 202, 203, 204 and 205 regarding the materials for the pedestrian trail from Black Fir Court to the pool facility. The trail shall be constructed in accordance with all standards outlined in the Public Facilities Manual, subject to the review and approval of DEM.
- 23. The number of swim meets (A and B Leagues) shall not exceed that number which is dictated by the Northern Virginia Swim League (NVSL) or its successor.
- 24. The pool facility shall not be rented to non-members.

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. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use 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 May 27, 1998. This date shall be deemed to be the final approval date of this special permit.

Mr. Hammack then moved to approve VC 98-H-018 for the reasons set forth in the Resolution subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated May 12, 1998.

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

FOX MILL WOODS SWIM AND TENNIS CLUB, INC., VC 98-H-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 3.0 ft. from side lot line. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Concurrent with SPA 81-C-093-04). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 19, 1998; and

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

- 1. The applicant is the owner of the land.
- 2. The encroachment would be adjacent to County park land with no impact on residential neighbors.

3. The pavilion will be open-sided with no adverse impact onto residential property.
4. The facility's improvements shall have no detrimental impact on the community.
5. The proposed improvements are consistent with the Zoning Ordinance provisions.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a covered wood deck and picnic pavilion shown on the plat prepared by J. Monaco and Associates P.C. dated October 1997, as revised through May 19, 1998, 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 covered wood deck and picnic pavilion shall be architecturally compatible with the swim and tennis club facility.

Pursuant to Sect. 18-407 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 502 May 19, 1998, (Tape 1), FOX MILL WOODS SWIM AND TENNIS CLUB, INC., SPA 81-C-093-04 and VC 98-H-018, continued from Page 501

Messieurs Dively and 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 27, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 502 May 19, 1998, (Tape 2), Action Item:

Approval of May 12, 1998 Resolutions

Mr. Hammack moved to approve the May 12, 1998 Resolutions. The motion was seconded by Mr. Ribble and carried by a 6-0-1 vote with Ms. Gibb abstaining.

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Page 502 May 19, 1998, (Tape 2), Action Item:

Additional Time to Establish the Use Approved by SP 95-S-050, Holy Spirit Lutheran Church

Page 502 May 19, 1998, (Tape 2), After Agenda Item, continued from Page ()

Mr. Pammel moved to approve staff's recommendation of 30 months of additional time for the Holy Spirit Lutheran Church to November 10, 2000. Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Ms. Gibbs abstaining.

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Page 502 May 19, 1998, (Tape 2), Action Item:

Approval of Minutes from 1998 Meetings: January 6, February 3, March 3, April 2, April 28

Mr. Pammel moved to approve the above sets of minutes which was seconded by Messieurs Dively and Hammack and carried by at 5-0-2 vote with Chairman DiGiulian and Ms. Gibbs abstaining.

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Page 502 May 19, 1998, (Tape 2), Action Item:

Memo from Regina Thorn, Clerk to the BZA, pertaining to Retention of Outside Legal Counsel

Discussion followed among the BZA members as to the merits of the action and Mr. Dively made a motion to hire Attorney Brian McCormack in connection with the appeal and subsequent lawsuit filed by Furnace Associates which was seconded by Mr. Ribble. However, further discussion among the Board members concluded that more information was necessary before moving on the item. Therefore, Mr. Hammack moved to defer action on the case until the next BZA meeting, May 26, 1998, which was concurred with by all BZA members and carried with a 7-0 vote.

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At this time, although not an Agenda Item, Chairman DiGiulian asked Ms. Langdon if there was any information now available concerning the acceptance or non-acceptance of Powerhouse Paintball Arena, SPA 85-M-021, known as the "Paint Ball" application. Ms. Langdon advised the Board that the application was accepted and scheduled for public hearing on June 30, 1998.

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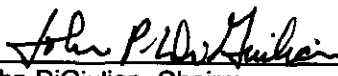
As there was no other business to come before the Board, the meeting was adjourned at 10:05 p.m.

Minutes by: Paula McFarland

Approved on: November 19, 1998



Regina Thorn, 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 26, 1998. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Robert Dively; Paul Hammack; James Pammel; and, John Ribble. Robert Kelley was absent from the meeting.

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 505, May 26, 1998 (Tape 1), Scheduled case of:

9:00 A.M. RONALD S. OXLEY, VC 98-M-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of garage addition 5.0 ft. from side and 20.0 ft. from front lot line and addition 19.1 ft. from front lot line. Located at 6332 Lakeview Dr. on approx. 16,300 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 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. Ronald Oxley, 6322 Lakeview Drive, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff 's presentation as contained in the staff report. The applicant was requesting a variance to permit a construction of a garage addition to be located 5.0 feet from the side lot line and 20.0 feet from the front lot line, and a room addition to be located 19.1 feet from the front lot line. A variance of 10.0 feet from the side lot line and 15.0 feet from the front lot line for the garage, and 15.9 feet from the front lot line for the room addition was being requested.

Mr. Oxley said that his property is bound on both side by easements and in the back and on the side by sewer lines. He said that the only place available is to the front of the property and to one side. He said he is adding a garage and a family room with a single level on the front shooting off to the garage on the side which would be less obtrusive from the road.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve VC 98-M-041, for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD S. OXLEY, VC 98-M-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of garage addition 5.0 ft. from side and 20.0 ft. from front lot line and addition 19.1 ft. from front lot line. Located at 6332 Lakeview Dr. on approx. 16,300 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 105. 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 26, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has complied with the nine prescribed criteria necessary for the granting of a

variance.

3. The applicant has no other location for the additions due to a sanitary sewer easement to the rear and a storm water easement to the west.
4. The only opportunity for the expansion of the house is to the south and to the east as shown on the plat.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition and a garage addition shown on the plat prepared by Hamid Moghavemi-Tehrani, dated December 2, 1997, 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 4-0. Mr. Dively and Mr. Hammack were 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 June 3, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROBERT D. AND JUDY A. BASSETTI, VC 98-H-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 13103 Weathered Oak Ct. on approx. 11,682 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((14)) 120.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ken Garrison, the applicant's, P.O. Box 1213, Sterling, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a room addition 15.4 feet from the rear lot line. A variance of 9.6 feet was requested.

Mr. Garrison said the applicant had an existing deck and wanted to convert it to a screened porch. He said in order to do that, he would have to encroach into the existing setback within 15 feet. Mr. Garrison said the property line backed up to a wooded easement.

Chairman DiGiulian asked Mr. Garrison if the area was a permanent open space and Mr. Garrison replied that it was all open space.

There was no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve VC 98-H-038, for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT D. AND JUDY A. BASSETTI, VC 98-H-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 13103 Weathered Oak Ct. on approx. 11,682 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((14)) 120. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 26, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The applicant has met the nine standards required for a variance.
3. The placement of the house on the pie-shaped lot has converging lot lines toward the front of the lot which causes the need for a variance.
4. The backyard is 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screen porch shown on the plat prepared by Steven B. Rolan, dated March 24, 1998, 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 5-0-1. Mr. Dively abstained. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 3, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 509, May 26, 1998 (Tape 1), Scheduled case of:

9:00 A.M. VICTOR AND ROSA PISCONTE, VC 98-L-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from rear lot line. Located at 7424 Hastings St. on approx. 11,967 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(41) 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's agent, Robert Eugene Beaver, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a room addition to be constructed 21.0 feet from the rear lot line. A variance of 4.0 feet was being requested.

Mr. Beaver said the property was acquired in good faith and had exceptional shallowness. He said the conditions of the property and the intended use of the property was not of general or recurring nature as to make reasonable and practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance. Mr. Beaver said the strict application of the Ordinance would produce undue hardship or restrict reasonable use of the property. He said if the application was approved, it would not be a detriment to the adjacent property; the character of the zoning district would not be changed, and it would be in harmony with the intended spirit and purposes of the Ordinance and would not be contrary to the public's interest.

There was no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 98-L-040, for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR AND ROSA PISCONTE, VC 98-L-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from rear lot line. Located at 7424 Hastings St. on approx. 11,967 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(41) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 26, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for a variance.

- 3. Only the corner of the proposed addition requires a variance because of the diagonally shaped rear lot line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a sunroom addition shown on the plat prepared by Kenneth W. White, dated October 9, 1997, 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 or structure.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 June 3, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 511, May 26, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ERIC J. CANDELORI, VC 98-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 1 lot and 4 outlots with proposed lot 2B having a lot width of 66.63 ft. Located at 2712 Chain Bridge Rd. on approx. 78,667 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((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. Eric J. Candelori, 2712 Chain Bridge Road, Vienna, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant proposed to subdivide the parcel into 1 lot and 4 outlots with proposed lot 2B having a lot width of 66.63 feet. A variance of 83.37 feet was requested. Lot 2B would contain 43,568 square feet in area that would remain independent with frontage and access on Chain Bridge Road. The parcel was established prior to the adoption of the current Ordinance. County records indicated that the existing residential dwelling proposed to remain on Lot 2B was constructed in the 1930s. The proposed outlots would range in sizes from 5,540 square feet to 8,887 square feet. The outlots would serve as extended rear and/or front yard areas of the four adjoining residential lots to the southwest. These existing and developed lots have established ingress/egress on Powder Mill Lane. A portion of the application parcel would be dedicated to street right-of-way to facilitate continuation of sub-street to the northern property.

Mr. Candelori stated that the subject property backed up to a small development. He said the property runs about 2 1/2 blocks with a row of 70-80 foot trees. He said he and his neighbors wanted to extend their backyards in order to preserve the trees. Mr. Candelori said he was told that he would have to go through the County's lot line adjustment process, but found out later that he had to appear before the BZA. He said his neighbors were all supportive of this effort.

Mr. Hammack wanted to know why staff felt the applicant did not meet standards for variance application.

Ms. Wilson said staff believed the standard required was that the applicant not have reasonable use under the strictest application of that Ordinance. She said there was a house on the property which was considered reasonable use.

Mr. Hammack asked if reasonable use of the property included less property and Ms. Wilson said it could. Mr. Hammack said this was an unusual situation and asked if staff was aware of any other situation of this kind in the County. Ms. Wilson stated that she was not aware of another similar case.

Mr. Hammack wanted to know if the variance was granted, would the outlots not require an amendment to the generalized development plan of the subdivision. He wanted to know if the applicant and his neighbors were adding property to their lots. Ms. Wilson said they were not adding property and that the properties were independent outlots. She said the Zoning Administrator had interpreted this matter and decided that this would not require a proffer condition amendment.

Mr. Hammack wanted to know if the property was taxed to the owners at fair-market value. Ms. Wilson said it was taxed to the owners but she was not sure how it was taxed.

Chairman DiGiulian called for speakers in support of the application.

Willard Strandberg, 2609 Powder Mill Lane, Vienna, Virginia, stated that one of the reasons they purchased the property was because of the woods in the rear. He said every effort was being made to preserve the trees. Mr. Strandberg stated that improvements had been made to the front of the property which were nice additions to the area.

Steve Coleman, 2613 Powder Mill Road, Vienna, Virginia, stated that his house was not one of the properties that would acquire any of the outlots, but he agreed that the applicant had done a great job in trying to preserve the character and beauty of the subdivision. He said the applicant had improved the appearance of the existing house on Lot 2B and had fully maintained the property.

There were no speakers in opposition.

Mr. Hammack wanted to know if it was the applicant's intention to transfer title by deed to the neighbors. Mr. Candelori stated that he would.

Mr. Candelori stated that if the application was approved, the Department of Environmental Management would record the lots. He said he was told that both lots (the existing lots and outlots) would be listed on the deed so he would not have to obtain two mortgages.

Mr. Hammack stated that outlots were taxed differently because they were considered non-buildable.

Chairman DiGiulian said the plat indicated that the existing lots would be subdivided into a larger lot and not outlots.

Mr. Candelori stated that he followed the instructions given to him by staff. He said the lots would not be larger lots because his property was zoned R-2 and the outlots were zoned R-1. He said the zoning would not be changed.

Ms. Wilson stated that when the subdivision plat was recorded the lots would be shown as outlots and in order for the lots to be incorporated into the applicant's established subdivision, a proffer condition amendment would be required and these would become independent lots.

Chairman DiGiulian stated that the plat did not delineate the lots. He said the plat showed property line adjustment and the abutting outlots as being Lots 18A, 19A, 20A, and 21A. The other lots did not have the "A" after them.

Mr. Hammack stated that in the box depicting the area tabulation on the plat, it showed original area and current area.

Ms. Wilson pointed out Development Condition #2 which referred to outlots. She stated that with approval of the application, the lots would be recorded as outlots.

Mr. Dively said an updated plat was needed showing that the lots would be outlots.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to defer the decision on the application until June 9, 1998, at 9:00 a.m. to allow the applicant to return to the Board with a plat showing the designation of the lots as four outlots. Mr. Hammack seconded the motion which carried by a vote of 4-2. Mr. Dively and Ms. Gibb voted nay. Mr. Kelley was absent from the meeting.

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9:00 A.M. SHEPHERD GATE CHURCH, SPA 97-Y-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 97-Y-012 for a church and related facilities to permit a change in the permittee. Located at 4300 Block of Pleasant Valley Rd. on approx. 10.1 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 33-2 ((1)) 12B. (change of permittee)

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tracey Steele Scileppi, the applicant's agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C. replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting an amendment to change the name of the permittee on the application site. No additional revisions were proposed to the site or use as it was previously approved on August 12, 1997. Staff concluded that the application was in harmony with the Comprehensive Plan and recommended approval subject to the proposed Development Conditions in Appendix 1 of the staff report.

Mr. Pammel wanted to know if the applicant was charged the full fee for the application. Susan Langdon, Chief, Special Permit and Variance Branch, responded by saying that it was her belief that an application for an amendment to a special permit with no changes were prorated.

Mr. Pammel wanted to know if the item could be handled administratively. Ms. Langdon stated that the applicant was charged a fee of one hundred (\$100.00) dollars. She said the issue was handled administratively in the past but there was a change in policy that stated that when there was a change in permittee, the item would return to staff as a special permit amendment. She said this was the way staff had been instructed to handle the application. Chairman DiGiulian stated that the Board did not agree with this approach and that staff could change the permittee.

Mr. Dively stated that in the past this item was placed on the After Agenda. He wanted to know why this item was not. Ms. Langdon said that it was an amendment to the applicant's special permit, and that staff was directed to follow the new policy after discussion between the County Attorney and the BZA.

Chairman DiGiulian stated that there was a discussion between the BZA and the County Attorney in which the BZA said that they wanted to approve or disapprove the change of permittee. He said that nothing was said about a full-blown staff report.

Mr. Dively said that he thought the discussion was based on the first paragraph where it stated that the permits were for the benefit of the permittee only.

Ms. Scelippi said that the application was originally approved in August 1997 under the name of the Trustees of the Board of Missions of the Mount Vernon Baptist Church. She said that when it was originally approved, it was envisioned by the applicant that the approval would be transferred to another church with an established congregation. It was the applicant's understanding that the process could be done administratively, but later found out that the policy had been changed and a special permit had to be filed.

Ms. Scelippi stated that the church had been operating from a warehouse space in Chantilly and had an established congregation of approximately 200. She said the contract on the purchasing of the property was contingent on the change in permittee being approved. The applicant did not request any changes to the previously approved Development Conditions or plat but requested to change the name under which the special permit was held. The application was in harmony with the Comprehensive Plan and was in conformance with the Zoning Ordinance.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to approve SPA 97-Y-012, for the reasons noted in the Resolution.

There was a discussion among Board members concerning cases requesting change in permittee. Mr. Dively suggested that for change in permittee cases, it should be put on the After Agenda.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHEPHERD GATE CHURCH, SPA 97-Y-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 97-Y-012 for a church and related facilities to permit a change in the permittee. Located at 4300 Block of Pleasant Valley Rd. on approx. 10.1 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 33-2 ((1)) 12B. 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 26, 1998; and

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant (Shepherd Gate Church) 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 Robson Group Architects, dated March 10, 1997, as revised through February 23, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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 under Phases I and II shall be 324. Upon completion of Phase III, the maximum number of seats may increase to 650.
6. A minimum of 84 parking spaces shall be provided as shown on the special permit plat for Phases I and II. Pursuant to the construction of Phase III, the parking spaces shall increase to 212 spaces as shown on the special permit plat. All parking shall be on site.
7. 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). No clearing or grading for the SWM pond shall be allowed outside the limits of clearing for the property as depicted on the special permit plat. If the SWM pond is waived or reduced in size, the area approved for the pond shall become part of the perceptually undisturbed open space on site.
8. The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat and shall remain as perpetually undisturbed open space. There shall be no clearing or grading of any vegetation within the EQC except for dead or dying trees or shrubs. There shall be no structures located in the EQC.
9. A tree preservation and restoration plan shall be submitted to the Urban Forestry Branch, DEM for

review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and all areas shown on the plat outside of the limits of clearing to be preserved and labeled as "perpetually undisturbed open space" and shall include the existing vegetation and EQC shown on the approved special permit plat. The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat.

The restoration plan shall include the planting of 100 saplings, two (2) to four (4) feet in height, in an area seventy-five (75) feet in width along the northern property line excluding the existing tree line. An additional 200 evergreen seedlings shall be planted by the applicant outside the delineated limits of clearing shown on the special permit plat. The location of the planting shall be at the discretion of the applicant; however, shall include planting in each yard of the site.

Species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short-leaf pine or other native evergreen varieties. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space. The reinforced lawn area as designated on the special permit shall be considered disturbed area and may be mowed.

10. Existing vegetation along the western lot line shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1 (within a 25 foot screening yard).

Transitional Screening 1 shall be provided by the applicant along the northern and southern lot lines unless a Non-Residential use Permit for the subject application is issued prior to approval of the site plan which allows non-residential use(s) on the remaining portion of Lot 10 and on adjacent Lot 1. If one or both of the special permits are approved for the adjacent parcels, then the restoration planting referenced in Development Condition 9 shall satisfy the barrier requirement adjacent to the special permit use. The existing vegetation within the EQC shall satisfy transitional screening along that portion of the lot line.

Notwithstanding the plant legend on the approved special permit plat, species and location of all transitional screening an peripheral parking lot landscaping shall be as determined by the Urban Forestry Branch, with ornamental evergreen and native evergreen species of plant material to be used to meet screening and peripheral parking lot landscaping requirements.

11. The barrier requirement shall be waived along all lot lines, except as noted above.
12. Road dedication and construction shall be determined at the time of site plan review. If road improvements are not constructed coincident with development, ancillary easements shall be provided if necessary to facilitate any road improvements. At such time as Pleasant Valley Road is reconstructed to a four lane divided road, the applicant shall provide unobstructed interparcel connection along with public access easements with the property on Lot 1 to the south, if Lot 1 has developed with a non-residential use. Subsequent to the aforementioned road improvements, the applicant's site entrance may be maintained and shall provide right-in/right-out turning movements only. If, at the time of reconstruction to a four lane divided road, a median break is provided opposite the applicant's site entrance, the interparcel connection is not required to be provided and full access to the site entrance shall be allowed.
13. A floodplain analysis shall be completed and if it is determined that a floodplain exists on the application property, it shall be delineated on the site plan and shall be designated within the area to be preserved as perpetually undisturbed open space. If the stormwater management pond or proposed building and/or parking areas are found to be located within the floodplain, the pond and/or other affected development shall be moved outside the floodplain and any area designated as undisturbed open space.
14. A soccer field may be proved on site as outlined on the approved special permit plat. There shall be no applications of pesticides or herbicides. The use of the soccer field may be open to groups other

than the church congregation up to ten (10) time per year.

15. The edges of the reinforced lawn parking area shall be delineated in such a way that all parking shall remain on the reinforced area and vehicles shall not be allowed to enter into the perpetually undisturbed open space.
16. 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.
17. A sign permit shall be obtained for any sign proposed for this site.
18. Notes 6, 8, 11 and 17 on the special permit plat shall be deemed null and void. Site design is subject to minor engineering modifications provided that building and parking setbacks are maintained, and the limits of clearing and grading shall not intrude into the EQC.

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. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use 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 3, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 516, May 26, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ZACK H. SHELLEY JR., SP 98-V-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit carport to remain 6.0 ft. from side lot line. Located at 1212 Falster Rd. on approx. 10,573 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 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. Zack Shelley, Jr., 1212 Falster Road, Alexandria, Virginia, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for modification to minimum yard

requirements based on error in building location to allow a carport to remain 6 feet from the side lot line. The carport was currently located 0.2 feet from the lot line and the applicant proposed to modify the structure. The Zoning Ordinance requires a minimum side yard of 7 feet for carports. Therefore, a modification of 1 foot or 15 percent was requested. Special permit, SP-97-V-049 was denied for the existing structure to remain 0.2 feet from the side lot line. A waiver of the one-year time period for filing of a new special permit was approved on December 16, 1997, when a request for reconsideration was denied.

Mr. Shelley said he submitted the special permit request to allow his 14-year old carport to remain. He said the special permit was denied in December because the carport remained 0.2 feet from the side lot line. Mr. Shelley stated that Mr. Dively suggested the carport was too close to the side lot line and would not allow room for maintenance. Mr. Shelley stated that Mr. Dively suggested that the rear portion of the carport should have about a 6 foot setback.

Mr. Shelley used pictures to explain the way his carport was currently and his proposed reduction. The pictures were also used to show the down spout and the direction of runoff the water from his property. He stated that ten of his neighbors gave their approval of the carport. Mr. Shelley further stated that there were several carports in his neighborhood that had garages that were closer to the property line than what he was proposing. He presented pictures showing those neighborhood carports.

Mr. Shelley said his son, who was a builder, would be doing the work on the carport. He said the carport would be upgraded and the guttering system would be moved from one side of the carport to the center in order to eliminate water running onto the neighbor's property.

Chairman DiGiulian stated that there was a Rachel Shore, who was one of Mr. Shelley's neighbor.

Mr. Ribble wanted to clarify what section of the Zoning Ordinance the application fell under and Ms. Schilling stated that it was building a in error.

Mr. Hammack wanted to know when was the first request denied and when was the zoning violation. Ms. Schilling said that the special permit was denied in December of 1997, and that the zoning violation took place in July of 1997. Mr. Hammack wanted to know why this application was accepted and Ms. Schilling responded by saying the applicant had a waiver of the one year waiting period.

Mr. Shelley said he did not have a building permit and assumed that the builder had one. He found out later that there was no permit.

Mr. Ribble asked Mr. Shelley about the letter which stated there was a deed that said

Mr. Shelley could build up to the lot line. Mr. Shelley said the deed was silent. He further stated that when he checked the deed, there was no prohibition for carports or outbuildings in the deed itself. Mr. Shelley said the building permit was a separate issue.

Mr. Shelley stated that his carport was built almost 15 years ago and that he has not had any complaints. He said all the water from the back of his house comes down the down spout onto the carport which then runs into a gutter that leads down the driveway. Mr. Shelley stated that the water that runs along the property line did not come from his house. He presented pictures showing the direction the water traveled from his house.

Mr. Ribble asked Mr. Shelley if could recall the contractor who built the carport. Mr. Shelley said that he did not recall the name of the contractor but that he was a local subcontractor from the Mount Vernon area. He said the contractor who built the driveway was also the same contractor who built the Shore's driveway.

Mr. Ribble asked who would be reducing the carport and Mr. Shelley said that his son, Steven Shelley, would be the contractor and obtain the help of other professional contractors.

Mr. Hammack asked Mr. Shelley how would he treat the existing concrete driveway. Mr. Shelley said the driveway would remain as it is, including the pad adjacent to the property line and the water would be back about 8 feet. Mr. Shelley said this falls under the County's Ordinance.

Chairman DiGiulian called for speakers in support of the application.

Mike Dougherty, 1214 Falster Road, Alexandria, Virginia, said he owned his home for 10 years and during that time he found the Shelley's to be outstanding neighbors who had maintained their property in an exemplary fashion. He said the carport in question was not offensive and it was his belief that the Shelleys would comply with the Ordinance. He urged the Board to grant the special permit application.

There were no other speakers in support and Chairman DiGiulian called for speakers in opposition.

Rachel Shores, 1210 Falster Road, Alexandria, Virginia, said she opposed the carport because of its poor design and low quality construction. She said this diminished property value in the area. Ms. Shores stated that Mr. Shelley used his carport to dispose of water from his property because he had blocked all other down spouts. She said because Mr. Shelley had no land left for the water run off, this was equivalent to piping the water to her lot, which was the only open ground on that side. Ms. Shores said that the flooding from the water was severe. She asked that if the special permit was granted, a 7-foot setback would be required to allow her replacement evergreens to restore privacy.

In his rebuttal, Mr. Shelley contradicted Ms. Shores' claim of water running from his down spout to her property. He said the only water that runs down Ms. Shore's yard and his yard comes from normal rain run off. Mr. Shelley said his carport fits his house architecturally. He felt that Ms. Shores was prejudiced against his carport.

Mr. Ribble asked Mr. Shelley how many other double carports were there in his neighborhood. Mr. Shelley stated that the street behind him had one. Mr. Shelley further stated that there were no double carports on his street only double garages.

Mr. Ribble asked Mr. Shelley if he planned to do anything with the concrete driveway and Mr. Shelley said nothing would be done to the driveway because the down spout was not toward Ms. Shores property.

Mr. Hammack asked Mr. Shelley where would his second car be parked and Mr. Shelley said one car would be parked inside the carport and the other would be parked behind the car that was under the cover.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve SP 98-V-013, for the reasons stated in the Resolution. Mr. Ribble stated that the neighbor had drainage problems, but moving the carport 6 feet from the property line would permit the water to stay on Mr. Shelley's property when there were overflow problems from his gutters.

For discussion purposes, Mr. Hammack said he had a problem with allowing the concrete pad to remain on the property line. He said he believed that this was not in harmony with the community to have pads outside the carport next to the property line. He said he would like to see the driveway realigned to allow 6 foot of turf between the driveway and the property line tapered down to the end of the driveway toward the entrance onto the street.

Mr. Dively said he believed this was a legislative function. Mr. Hammack said moving the carport back the way it was proposed would satisfy most of the problem.

Chairman DiGiulian said he was concerned about the application because the pictures from Ms. Shores showed water and it had to come from some place. He said he was not sure that the water did not come from Mr. Shelley's yard.

Mr. Pammel said he agreed that the water came from some place.

Mr. Hammack said he was not convinced that the water was all Mr. Shelley's problem.

Mr. Ribble made a substitute motion to add a condition to read that all water drainage generated by the use of the applicant's property be kept on the applicant's property.

Mr. Dively said the Board could not resolve every problem. He said he did not believe the Board could

create conditions on permitted uses that had nothing to do with the issue before the Board, which was the carport. He said he believed the water problem did not have anything to do with the carport but if it did, moving the carport in, so that it was a one (1) foot error, would resolve the problem. He said if it was due to impervious surface, then that was a legislative issue that the Board could not condition.

Mr. Hammack disagreed and quoted Section 8-914 of the Zoning Ordinance which talked about the detriment, use, and enjoyment of other property in the immediate vicinity.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ZACK H. SHELLEY JR., SP 98-V-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit carport to remain 6.0 ft. from side lot line. Located at 1212 Falster Rd. on approx. 10,573 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 40. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 26, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The noncompliance was done in good faith.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-006 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This Special Permit is approved for the location of the carport shown on the plat prepared by Kenneth W. White, Land Surveyor, dated September 2, 1997, as revised through February 17, 1998, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained and a final inspection approved for alterations to the existing carport.
3. All drainage water generated by the use of the applicant's property shall be kept on the applicant's property.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion which carried by a vote of 5-1. Mr. Dively 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 June 3,

Page 520 May 26, 1998, (Tape 1) ZACK H. SHELLEY JR., SP 98-V-013, continued from Page 519

1998. This date shall be deemed to be the final approval date of this special permit.

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Page 520 May 26, 1998 (Tape 1), After Agenda Item:

Approval of May 19, 1998, Resolutions

Mr. Pammel made a motion to approve the May 19, 1998, Resolutions. Mr. Ribble and 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 520 May 26, 1998 (Tape 1), After Agenda Item:

Memo from Regina Thorn regarding
Furnace Associates and S. W. Rogers

Mr. Pammel said he believed the question revolved around two cases. He wanted to know if they were the same. Susan Langdon, Chief, Special Permit and Variance Branch, stated that Furnace Associates filed an appeal on September 11, 1997, of a Notice of Violation and then Furnace Associates and Rogers filed an appeal of another Notice of Violation. She said the appeals were heard concurrently and were the two that were now being scheduled. Mr. Dively made a motion to retain Brian McCormick as counsel to represent the Board. 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 520 May 26, 1998 (Tape 1), After Agenda Item:

Approval of December 16, 1987, Minutes

Mr. Pammel made a motion approve the December 16, 1997, Minutes. Mr. Dively 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 10:25 a.m

Minutes by: Ann-Marie Wellington

Approved on: October 6, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 2, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 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 521 June 2, 1998 (Tape 1), Scheduled case of:

9:00 A.M. SAMANTHA GRIFFITH KEARNEY AND FRED GRIFFITH, VC 98-P-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 3323 Hemlock Drive on approx. 10,510 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (3) 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. Samantha Griffith Kearney, 3323 Hemlock Drive, Falls Church, Virginia, said it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a room addition 8.1 feet from the side lot line in the Homes Run Acres Subdivision; therefore, a variance of 3.9 feet was requested.

Ms. Kearney stated that she wanted to read a letter from her neighbor, Mr. David R. Marshall, who could not attend the public hearing due to conflicts with work. Mr. Marshall's letter stated that he believed the approval of this application would benefit himself as a property owner and the neighborhood as a whole. As the adjacent and affected property owner, he stated that he felt the proposed addition is sited in such a manner that it would not adversely impact the light, air, and privacy of his residence. The plan considers the placement of structures on his adjacent lot and surrounding properties. Further, his letter stated that the proposed addition would enhance property values and curb appeal in the neighborhood. For these reasons, he supported granting the variance for reduction of the setback to 8.1 feet. The preservation of the unique architectural integrity of the community is a high priority of residence. The proposed addition is consistent with the character and intent of the neighborhood. In addition, the project would encourage other property owners to improve their properties and maintain the vitality of a 50 year old community. If improvements of this nature were not made possible, acknowledging the unique lot layout and building techniques, the neighborhood would become stagnant and unstable. As an owner of a similar older home in Homes Run Acres, he appreciates the challenges posed by maintaining and improving properties in this dynamic and evolving community.

There was no one to speak in support or opposition of the application and Chairman DiGiulian closed the public hearing.

Mr. Pammel noted that looking at the plat and noticing the height of the shed, he questioned staff if it was in excess of that permitted by the Code, which would indicate a variance would also be required for the shed.

Ms. Langdon stated that upon research of the shed, it was constructed and pre-dated the Ordinance and so it was allowed.

Ms. Kearney stated that the shed from finished floor to the pitch of the roof is under 8 1/2 feet, however, the grade falls as you come towards the house thereby there is an increase in the height. As part of the proposed construction they would fill under the shed so that the height everywhere would be 8 1/2 feet.

Mr. Hammack made a motion to approve VC 98-P-035 subject to the development conditions contained in Appendix 1 of the staff report dated June 2, 1998.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SAMANTHA GRIFFITH KEARNEY AND FRED GRIFFITH, VC 98-P-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 3323 Hemlock Drive on approx. 10,510 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (3) 9. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has satisfied the nine required standards of a variance application.
3. This variance is required in part because the property is relatively narrow, the lot lines converge toward the front of the property and the property is very deep.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law: THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition shown on the plat prepared by Kenneth W. White, dated March 18, 1998, 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 June 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 523 June 2, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ANA P. FLORES, VC 98-L-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yard of a corner lot. Located at 6921 Floyd Ave. on approx. 14,009 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((2)) (2) 13.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the notices were not in order and that nothing had been received from the post office which would indicate the notices had been sent. She stated that staff had tried to contact the applicant in the last couple of weeks, however, never received a return telephone call. Ms. Langdon noted that Ms. Flores was also not at the public hearing. Therefore, Ms. Langdon stated that if the Board would like to defer the case, staff would suggest July 28, 1998, at 9:00 a.m.

Mr. Pammel moved to defer the application to July 28, 1998.

Mr. Kelley stated that staff should notify the applicant and inform them that they would only be granted one deferral.

Chairman DiGiulian agreed that staff should notify the applicant of the July 28, 1998 date and inform them that if this date could not be met, the case would be dismissed due to a lack of interest.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 523 June 2, 1998 (Tape 1), Scheduled case of:

9:00 A.M. D. BERG, VC 98-V-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard on a lot containing less than 36,000 sq. ft. and construction of addition 11.0 ft. from side lot line. Located at 7610 Holiday Dr. on approx. 22,366 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((7)) (7) 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. Deborah Berg, 7610 Holiday Drive, Alexandria, Virginia, said it

was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a detached garage in the minimum required front yard of a lot containing less than 36,000 square feet. The applicant was also requesting a variance to permit construction of an addition 11.0 feet from the side lot line. The minimum side yard required in the R-2 District is 15.0 feet; therefore, a variance of 4.0 feet was requested. Since the publication of the staff report, the applicant indicated that she no longer wished to pursue construction of the detached garage. Ms. Schilling stated that staff has received a revised plat dated June 1, 1998, which reflected the change.

Ms. Berg stated that originally she had applied for a detached garage but after several conversations and meetings with neighbors they showed concern with regard to the change in the neighborhood, therefore, this was not of significant importance so she would not go forward with the detached garage.

Ms. Berg stated that her home is on a corner lot and is placed at the back of the lot which has a hill that increases up to 12 to 15 feet. When the house was placed on the lot, it was set at the back of the lot at almost the setback line and also in the far corner which only left front and side yards available. In order to do an addition, she felt that she was limited as a result of the topographical layout and the placement of the house so that any improvements to be done would require a variance because of having a small rear yard.

There was no one to speak in support or opposition of the application and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-V-024 subject to the development conditions as contained in Appendix 1 of the staff report dated June 2, 1998 with the following modification: under conditions #1 and #3, delete the reference to the detached garage and refer to the new plat that was presented to the Board on this date as revised through June 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

D. BERG, VC 98-V-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard on a lot containing less than 36,000 sq. ft. (the applicant withdrew the request for the accessory structure) and construction of addition 11.0 ft. from side lot line. Located at 7610 Holiday Dr. on approx. 22,366 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((7))(7) 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 June 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant provided testimony before the Board indicating compliance with the nine required standards of a variance application.
3. The siting of the house on the lot is in close proximity to the western property line.
4. The topographical considerations to the south of the property eliminates any other siting of the proposed addition other than where the applicant proposes.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a building addition to the single family dwelling shown on the plat prepared by Kenneth W. White, dated October 31, 1991, as revised by James J. Hricko on June 1, 1998 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition to the dwelling shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 June 10, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. HAROLD B. HEISLER, SP 98-Y-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to certain R-C lots to permit construction of deck 11.0 ft. from side lot line. Located at 15240 Louis Mill Dr. on approx. 11,205 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 205.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harold B. Heisler, 15240 Louis Mill Drive, Chantilly, Virginia, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant was requesting a special permit for a modification to minimum yards for certain R-C lots to permit construction of a deck 11.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet for a deck; therefore, a modification of 4.0 feet was requested.

Mr. Dively asked if under the original zoning a variance would have been required.

Ms. Schilling responded that it would not have been required.

Mr. Heisler stated that he believed that his request met all of the standards for a special permit and would like to point out that specifically the 4.0 feet of exception that they require would be unobtrusive. It is in essence the ground level portion of the decking. Also, both adjacent neighbors had been advised of the plans and had been shown how and where it would be located and both submitted letters attesting that they were in favor of this special permit.

Mr. Hammack asked Mr. Heisler if the deck would be adjacent to the outside of the screened porch as depicted in the photographs the Board was shown.

Mr. Heisler stated that it would be adjacent to the outside of the screened porch.

There was no one to speak in support or opposition of the application and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP 98-Y-009 subject to the development conditions as contained in Appendix 1 of the staff report dated June 2, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAROLD B. HEISLER, SP 98-Y-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to certain R-C lots to permit construction of deck 11.0 ft. from side lot line. Located at 15240 Louis Mill Dr. on approx. 11,205 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 205. 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 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of

- the zoning district that was applicable to the lot on July 25, 1982.
- 5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
- 6. The addition would have been permitted previously and is a modest request.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This special permit is approved for the location of the deck shown on the plat prepared by Deputy Land Surveying, dated June 26, 1989, as revised by Harold B. Heisler, dated February 17, 1998, 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. 8- 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1998.

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9:00 A.M. HENRY HANSEN, SP 98-Y-008 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to certain R-C lots to permit construction of addition 14.7 ft. from side lot line. Located at 5111 Brentwood Farm Dr. on approx. 20,160 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 56-3 ((9)) 93.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry Hansen, 5111 Brentwood Farm Drive, Fairfax, Virginia, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant was requesting a special permit for a modification to minimum yards for certain R-C lots to permit construction of a second story addition over an existing garage 14.7 feet from the side lot line. The minimum side yard required in the R-C District is 20.0 feet; therefore, a modification of 5.3 feet was requested.

Mr. Hansen stated that his proposal was to make use of the area above the existing garage. The existing setback line would remain the same as was when the house was built in the early 1980's. He stated that neither the footprint of the garage, nor the lower level of the garage would change. Only the upper level would change in order to make use of the area above the garage which is now constructed of 2 x 4 tresses and can only sustain a very light load. The view from the street would be the same. The pitch of the roof would remain the same. The addition would be two (2) dormers facing the street and approximately 14 inches more in height as viewed from the street. The purpose of the 14 additional inches is for live load

beams to be placed.

There was no one to speak in support or opposition of the application and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-Y-008 subject to the development conditions as contained in Appendix 1 of the staff report dated June 2, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRY HANSEN, SP 98-Y-008 Appl. under Sect(s). 8-913 of the Zoning Ordinance for modification to certain R-C lots to permit construction of addition 14.7 ft. from side lot line. Located at 5111 Brentwood Farm Dr. on approx. 20,160 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 56-3 ((9)) 93. 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 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
5. The applicant has presented testimony which supports the need of the special permit.
6. The application meets the requirements of 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 Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location of a second story addition over the garage shown on the plat prepared by Kenneth W. White, dated April 16, 1997, as revised by Henry Hanson, dated February 16, 1998, 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. 8- 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if

Page 529, June 2, 1998, (Tape 1) HENRY HANSEN, SP 98-Y-008, continued from Page 528

a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 June 10, 1998.

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Page 529, June 2, 1998 (Tape 1), Scheduled case of:

9:00 A.M. YOUNG SAENG KOREAN PRESBYTERIAN CHURCH TRUSTEES, SPA 80-S-070 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend 80-S-070 for church and related facilities to permit building additions, increase in seating capacity, site modifications, modification to development conditions and change of permittee. Located at 15015 Braddock Rd. on approx. 3.98 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 43-4 ((1)) 6. (Concurrent with VC 98-Y-049).

9:00 A.M. YOUNG SAENG KOREAN PRESBYTERIAN CHURCH TRUSTEES, VC 98-Y-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 30 ft. from a front lot line. Located at 15015 Braddock Rd. on approx. 3.98 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 43-4 ((1)) 6. (Concurrent with SPA 80-S-070).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Stackhouse, et. al., 2200 Clarendon Boulevard, Arlington, Virginia, agent for the applicant, said it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. The applicant was requesting a special permit amendment to construct new church facilities in two (2) phases. The first phase included demolition of the existing parsonage and construction of a one (1) story building with a height of 34.0 feet consisting of 10,400 square feet. A bell tower with a height that was previously shown as approximately 129 feet on the plat, however, the applicant stated that the height was in error and the bell tower height would be 69 feet. The chapel would be retained as a fellowship hall with a kitchen addition as well as the existing classroom building. The total gross floor area with Phase 1 is proposed to be 13,787 square feet or a floor area ratio (FAR) of 0.08. Phase 1 would have a seating capacity of 312 worshipers and parking with 78 spaces. In Phase 2, the classroom and chapel buildings would be demolished and a two (2) story addition with 6,400 square feet of gross floor area would be constructed, resulting in a total of 16,800 square feet or a FAR of 0.968. The maximum FAR permitted in the R-C District is 0.10. Phase 2 would have a seating capacity of 480 worshipers and parking with 120 spaces. The applicant also requested a change in permittee from the Rock Hill Church of God to the Young Saeng Korean Presbyterian Church Trustees and approval of a variance to permit the existing fellowship hall to remain 30.0 feet from the front lot line. In staff's evaluation, the transportation and environmental issues were adequately addressed with the adoption of the development conditions that are contained in Appendix 1 of the staff report. However, staff believed that the proposed increase in FAR from 0.03 to the maximum permitted in the Zoning District is a three-fold increase combined with an increase in seating capacity from 120 seats to 480 seats and a large parking area which suggested intensity that was out of character with the very low density of the residential nature of the R-C District. Staff believed that the intensity of the use should be reduced to that which is more compatible with the low density residential uses; particularly on a lot that is smaller than the minimum lot size of 5.0 acres in the R-C District; therefore, staff recommended denial of this application. However, if the intent of the Board of Zoning Appeals was to approve this application, staff recommended that such approval be made subject to the proposed development conditions in the staff report.

Mr. Dively asked Ms. Schilling if the intensity of the use was within the limits allowed by the Zoning Ordinance.

Ms. Schilling replied that it is the maximum permitted in the R-C District and there could never be any more construction on the site.

Mr. Hammack asked staff, in their opinion, what would be an appropriate reduction to bring it within compliance.

Ms. Schilling replied that generally more compatible floor area ratios in the R-C District would be between .06 and .07, which is less than what is proposed in this case at Phase 1.

Ms. Strobel returned to the podium to make a presentation to the Board. She stated that the application property had been owned by religious organizations and used for church services since 1929. Ms. Strobel stated that in order to better serve the needs of its congregation, the church proposed to construct a new sanctuary and related facilities in two phases of development.

Ms. Strobel stated that the Planning staff had raised an issue with regard to the amount of undisturbed open space and intensity associated with the proposed development. She stated that staff has suggested that approximately 50% of the land area should remain as undisturbed open space. The applicant has redesigned its original proposal at considerable expense in order to address this concern. Modifications included the elimination of a septic field and the connection of the property to sanitary sewer. This modification would not only achieve more open space but would also provide a more sensible means of providing utilities in the R-C District. The result of this modification is approximately 49% of undisturbed and revegetated open space with the first phase of development. The second phase would result in approximately 47% of undisturbed and revegetated open space. She stated that the applicant currently makes a portion of its property available to the youth soccer league. This use would have to be eliminated in order to satisfy the staff's concerns. She stated that the policy of 50% open space is not required by the Zoning Ordinance or the Comprehensive Plan. Ms. Strobel said the applicant was not asking for any intensity above that than what is allowed by the Zoning Ordinance.

Ms. Strobel stated that the 69 foot bell tower is approximately 120 feet from the nearest property line. Ms. Strobel asked to revise Development Condition #6 to state that the total height of the bell tower shall not exceed 69 feet. Further, Development Condition #7 requested a barrier around the entire periphery of the site. The applicant suggested that this was not necessary and requested a waiver of the barrier. Ms. Strobel suggested that Development Condition #11, regarding the location of the dumpster, be modified to state that the dumpster shall be enclosed by a solid wood fence. Other than these exceptions, the applicant was in agreement with the proposed development conditions. The applicant was providing significant transportation improvements. The applicant would provide dedication of 30 feet with Phase 1 of the improvements. With Phase 2 improvements, the applicant would construct an additional 9 feet of pavement. The reason the applicant did not wish to provide all improvements up front, was due to the relocation of existing utility poles along Braddock Road and the cost of the relocation.

Mr. Pammel asked staff for clarification on page 8 of the staff report which showed the FAR Ordinance requirement at 0.1, Phase 1 at .08 FAR and Phase 2 at 0.9. Mr. Pammel asked if this was correct. Ms. Schilling responded that Phase 2 should be .0968.

Mr. Hammack asked Ms. Strobel, given that the applicant wanted to develop the property to almost the maximum permitted under the Ordinance, did the church understand that they would probably be precluded in developing the property in any other way in the future because they were at their maximum. Ms. Strobel stated that they understood.

Chairman DiGiulian asked if there was anyone to speak in favor of the application.

Mr. Gordon Burgess, 15027 Braddock Road, came to the podium to speak in favor of the application. Mr. Burgess stated that he has lived at this residence for over 25 years and stated that the church had been one of the best neighbors that had come into the neighborhood. He further stated that the improvements to the road would also benefit him. He believed that these improvements would do good for the neighborhood and the area.

Mr. John Maxted, 13519 Moss Glen Road in Clifton, Virginia, came to the podium to speak in favor of the

application. Mr. Maxted stated that his daughter's soccer team had been using the facilities at the church for the past 2 ½ years. He stated that the church had always been very cooperative and friendly and maintained the fields for the soccer team. Mr. Maxted informed the Board that the church had also opened their doors of their meeting facilities.

Chairman DiGiulian asked if there was anyone to speak in opposition of the application.

Mr. Glenn Matsumoto, President of Matsumoto Carolina Incorporated, the owner of the property adjacent to the church located on the northwest side of the boundary and the landlord of the Rock Hill Group Home of the Mentally Handicapped located at 15101 Braddock Road, Fairfax, Virginia, came to the podium to speak in opposition of the application. Mr. Matsumoto requested that the Board require in the redevelopment of the church property the access of County water and sewer and that such water and sewer lines be laid parallel to Braddock Road on County easement and that the access be made available at the northwest corner of the church property and adjacent to his property.

Mr. Hammack asked staff if this request would be addressed by the Department of Environmental Management in the Public Facilities Manual. Ms. Schilling stated that the exact location of the water and sewer lines would be determined at time of site plan review. She further stated that sewer is currently available in two separate locations, one is adjacent to Lot 1 that fronts on Braddock Road and the other in Westfields, if they obtained an easement from Westfields for sewer access. Whether or not the water and sewer lines would follow along Braddock Road or cross through an easement on another property to access the church is unknown at this time.

Chairman DiGiulian asked Ms. Strobel for a rebuttal. Ms. Strobel replied that the issue of where sewer and water lines would be located would be decided at time of site plan approval. Ms. Strobel stated that they do not know at this time where the lines will come in, however, she said that they will do their best to work with Mr. Matsumoto.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 80-S-070 subject to the development conditions as contained in Appendix 1 of the staff report dated June 2, 1998 to include the modification to Development Conditions #6, #7 and #11.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

YOUNG SAENG KOREAN PRESBYTERIAN CHURCH TRUSTEES, SPA 80-S-070 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend 80-S-070 for church and related facilities to permit building additions, increase in seating capacity, site modifications, modification to development conditions and change of permittee. Located at 15015 Braddock Rd. on approx. 3.98 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 43-4 ((1)) 6. (Concurrent with VC 98-Y-049). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The applicant has presented testimony indicating compliance with general standards for special permit uses.
3. The development plan is well thought through and the request is reasonable.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Young Saeng Korean Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 15015 Braddock Road, (3.98 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 Wolfe Engineers, Inc., dated February 2, 1998, as revised through May 6, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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. Phase I shall consist of a maximum of 312 seats in the main area of worship. A minimum of 78 parking spaces and a maximum of 120 parking spaces shall be provided. All parking shall meet Zoning Ordinance requirements and shall be on-site. Phase II shall consist of a maximum of 480 seats in the main area of worship and a total of 120 parking spaces shall be provided within the areas shown on the special permit plat.
6. The total height of the bell tower shall not exceed 69 feet.
7. The barrier requirement shall be waived.
8. Transitional Screening Type I shall be provided along the northwest, southeast and southwest property boundaries as shown on the special permit plat, and shall consist of natural vegetation supplemented with evergreen plant materials, subject to the review and approval of the Urban Forestry Branch of DEM. Once established, the transitional screening yards shall be left undisturbed and shall satisfy the Transitional Screening requirements.
9. A restoration plan shall be submitted to the Urban Forestry Branch of DEM for review and approval at the time of site plan approval, for the revegetation of the areas shown on the plat as revegetated undisturbed open space. The restoration plan shall be developed with the intention of revegetating and restoring portions of the perpetually undisturbed open space to its natural habitat. Plant species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short leaf pine or other native evergreen varieties. The size (saplings or seedlings) and species may be dependant on market availability, but shall be subject to review and approval of the Urban Forestry Branch of DEM. The Urban Forestry Branch shall also review and approve the proposed location of the plantings. The applicant may maintain the perpetually undisturbed open space by hand as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural secession takes over. There shall be no fertilizing or mowing of weeds or grass in the undisturbed open space.

10. In the event that waivers are granted for the development of the site without the provision of the stormwater detention facility in the location shown on the Special Permit Plat, that area shall be revegetated and maintained as undisturbed open space.
11. A dumpster enclosed by a solid wood fence shall be located as shown on the attached drawing (Exhibit A).
12. Right-of-way of up to 45 feet from the centerline of Braddock Road shall be dedicated to the Board of Supervisors in fee simple at the time of site plan review for Phase I or upon demand, whichever comes first. Prior to approval of a Non-Residential Use Permit for Phases I and II, the applicant shall construct frontage improvements and a right turn lane as depicted during Phases 1 and 2 and as shown on the approved special permit plat, subject to the review and approval of DEM and VDOT.
13. All signage on the property shall conform to the provisions of Article 12, Signs of the Zoning Ordinance.
14. The use of loudspeakers shall not be permitted outside the building.
15. Any outdoor lighting of the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property.
 - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property,
 - The lights shall be controlled with an automatic shut-off device.
16. The temporary trailer building shall be removed prior to issuance of a Non-Residential Use Permit for Phase I.

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. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1998. This date shall be deemed to be the final approval date of this special permit.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

YOUNG SAENG KOREAN PRESBYTERIAN CHURCH TRUSTEES, VC 98-Y-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 30 ft. from a front lot line. Located at 15015 Braddock Rd. on approx. 3.98 ac. of land zoned R-C, WS and AN. Sully District. Tax Map 43-4 ((1)) 6. (Concurrent with SPA 80-S-070). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards of a variance application.
3. The existing building pre-dates the Zoning Ordinance.
4. The structure is 30 feet from the front lot line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the existing fellowship hall shown on the plat prepared by Wolfe Engineers Inc., dated February 2, 1998, as revised through May 6, 1998, submitted with this application and is not transferable to other land.

This approval*, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble and 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 June 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 535 June 2, 1998 (Tape 1), Scheduled case of:

9:00 A.M. MARY T. MCCONNELL, SP 97-H-054 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.2 ft. from side lot line. Located at 10034 Scenic View Terrace on approx. 23,040 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 18-2 ((9)) 124. (DEFERRED FROM 1/27/98 FOR NOTICES; DEF. FROM 3/24/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary McConnell, 10034 Scenic View Terrace, Vienna, Virginia, said it was.

Susan Langdon, Branch Chief, Special Permit and Variance Branch, gave staff's presentation as outlined in the staff report. Ms. Langdon stated that this case was heard on March 24, 1998, to allow a reduction to the minimum yard requirements based on an error in building location to permit a covered deck to remain 6.2 feet from the side lot line. The minimum required side yard is 12 feet. The Board deferred the case to allow the applicant time to discuss this deck with their homeowners association.

Ms. McConnell stated they had spoken with the homeowners association and the deck in question was put up approximately 8 years ago when they purchased the house in July 1986. She stated that the neighbors on the pipestem behind their property had sent a notice to the County stating that the structure did not have a permit and was in error. Consequently, the special permit was filed to allow the structure to stay in place. Ms. McConnell stated that the homeowners association had informed them that they would be allowed to keep the structure which is a 10 x 12 foot deck with two sides. From the deck level the sides are 8 feet high, however, due to the slope at the back, it is above that, which is what was stated in the citation. Ms. McConnell stated that they had added the roof to the deck which was found unacceptable by the neighbor and since that time, a request had been made to the homeowners association to be allowed to remove the roof and place it above the lower deck. Ms. McConnell gave the Board a drawing of a proposed new roof which is a gazebo style in cedar shake. She stated that the previous roof was a dark hunter green tin which was a shed style so that it was high at the back, which is their neighbors lot line vision. The new roof would not be this high due to the style. Ms. McConnell stated that she spoke with the President of the homeowners association who believed the new roof was an attractive new proposition and would blend in through the existing foliage.

Ms. McConnell stated that lattice had been placed on the exterior of the sides as the architectural committee had recommended to make it more attractive. Three 7 foot Leland Cypress trees, 21 evergreen shrubs and another tree had been planted and she believed in a period of three years the neighbors would not be able to view the structure. Ms. McConnell stated that the neighbor did not like the pine trees, however, the pine trees were approximately 30 feet high and shielded vision of the two homes.

There was no one to speak in support of the application. Chairman DiGiulian asked if there was anyone to

speak in opposition.

Leticia Rhoads, 10036 Scenic View Terrace, Vienna, Virginia, came to the podium to speak in opposition of the application. Ms. Rhoads stated that they had lived in the adjacent property for over 12 years and their property was the most affected by the request. Ms. Rhoads stated that she had previously provided the Board with a letter and pictures as well as a letter from the homeowners association describing their objection. She stated that the original owner of the property had built a small deck too close to the property line. Ms. Rhoads stated that they had objected at that time but were assured it was temporary. She stated that it then became an enclosed arbor and she still believed it was temporary. Ms. Rhoads stated that the original owners moved away and the McConnells moved in and installed a hot tub, expanded the walls of the structure, and added a roof. Ms. Rhoads believed that this was no longer a simple deck or a temporary arbor, but reduced their property value and that of the neighborhood. Ms. Rhoads stated that only a few small shrubs had been planted.

Mr. Ribble asked Ms. Rhoads for a copy of the letter that was sent to them. Ms. Rhoads stated that she had a copy of the association's letter as well as the County inspection. She provided this information to Mr. Ribble. Mr. Ribble asked if she had the pictures for the Board's review. Ms. Rhoads gave the Board a copy of the pictures.

Mr. Hammack asked Ms. Rhoads how far away her home is from the property line. Ms. Rhoads replied that it was approximately 11 to 12 feet away. Mr. Hammack asked where was it positioned with respect to the property line. Ms. Rhoads stated that the deck was visible from her driveway which is close to the property line of their garage. Mr. Hammack asked if the house was behind or adjacent to the garage. Ms. Rhoads stated that it is aligned with the garage.

Chairman DiGiulian asked Ms. McConnell for a rebuttal. Ms. McConnell stated that not being at the residence 8 years prior when the previous owners of the home had installed the deck and the sides, she could only respond by stating that they were told no one opposed it at that time or any time thereafter, until the roof was installed. Ms. McConnell stated that if the structure had not been there originally, they most likely would not have purchased the home.

Chairman DiGiulian closed the public hearing.

Mr. Hammack seconded the motion which carried a vote of 6.0. Mr. Kelley was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY T. MCCONNELL, SP 97-H-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.2 ft. from side lot line. Located at 10034 Scenic View Terrace on approx. 23,040 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 18-2 ((9)) 124. 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 2, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit. if such was

required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a covered deck shown on the plat prepared by Rice Associations, P.C., dated July 9, 1997, revised through October 30, 1998, submitted with this application and is not transferable to other land.

This approval*, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. 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 June 10, 1998. This date shall be deemed to be the final approval date of this special permit.

// Page 537 June 2, 1998 (Tape 1), Scheduled case of:

9:30 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, A 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property has been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES. CONTINUED FROM 3/11/97 TO ALLOW APPLICANT TO FILE A SPECIAL PERMIT OR VARIANCE. DEF. FROM 9/16/97, 10/14/97 AND 2/24/98).

Chairman DiGiulian asked William Shoup, Deputy Zoning Administrator, if there was a request for a deferral.

Mr. Shoup stated that there was a request for a continuance. He said the public hearing was first held in March, 1997. As indicated in the May 22, 1998, memorandum, there was one outstanding issue in this appeal that still remained, which was the carport enclosure issue. Mr. Shoup stated that the appellant had filed a special permit application for an error in building location to resolve this issue which is scheduled for a public hearing on July 7, 1998. Therefore, Mr. Shoup suggested that the appeal be continued to July 7, 1998, for appropriate action pending the disposition of the special permit.

Mr. Dively asked Mr. Shoup if the case could be dismissed since enforcement would not be sought due to the

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special permit application.

Mr. Shoup replied that he believed the appellant would like to keep the appeal in place pending the disposition of the special permit.

Mr. Burke came to the podium and stated that he would like to keep the appeal open until the July 7, 1998, hearing at which time he believed the appeal would either be withdrawn or dismissed.

Mr. Hammack moved to continue the appeal to July 7, 1998, to be heard contemporaneously with the special permit application.

Mr. Pammel and 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 538, June 2, 1998 (Tape 1), Scheduled case of:

9:30 A.M. GARLAND L. NEESE, & RUBY L. NEESE, A 1997-MV-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are maintaining two separate dwelling units on one lot in violation of Sect(s). 2-501 of the Zoning Ordinance. Located at 7805 Schelhorn Rd. on approx. 33,595 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (6) 24.

Chairman DiGiulian noted there was a request for a withdrawal of the appeal application.

Mr. Dively moved that the appeal be withdrawn. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 538 June 2, 1998 (Tape 1), Action Item:

Approval of June 2, 1998, Resolutions

Mr. Dively made a motion to approve the June 2, 1998, Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 538 June 2, 1998 (Tape 1), Action Item:

Additional Time to Establish the Use Approved by SP 95-S-049, Anjumane Islahul Muslemeen of Northern Virginia, 8608 Pohick Road, 98-1 ((1)) 22, Springfield District

Mr. Hammack moved to grant one (1) year of additional time to May 29, 1999. 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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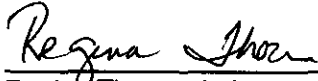
Page 538 June 2, 1998 (Tape 1), Action Item:

Request for deferral for Karharias, Inc., t/a the Shark Club Billiards and Café/Shark Club, A 1998-SU-001

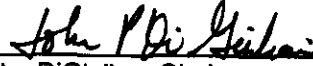
Staff recommends a deferral date of August 11, 1998. The special permit application is scheduled to be heard on that date. Mr. Dively moved that appeal application be moved to August 11, 1998. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

As there was no other business to come before the Board, the meeting was adjourned at 10:16 a.m.

Minutes by: Deborah Hedrick
Approved on: October 20, 1998



Regina Thorn, 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 9, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb, Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. None were absent.

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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Chairman DiGiulian announced that the Board would hear several After Agenda Items before the usual Order of Agenda Items. He then called Item #2 for the Board's determination.

Page 541, June 9, 1998, (Tape 1), After Agenda Item:

Intent to Defer, Appeal A 1997-SU-026, JAMES L. BLEVINS, 15900 Lee Highway

William Shoup, Deputy Zoning Administrator, referencing his memorandum dated June 4, 1998, stated that staff supported the deferral request and recommended a date of November 10, 1998, at 9:30 a.m.

There being no objection, Mr. Ribble SO MOVED which was seconded by Mr. Pammel and carried unanimously by a 5-0 vote with Messieurs Dively and Hammack not present for the vote.

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Page 541, June 9, 1998, (Tape 1), Action Item:

Deferral Request for Appeal, A 95-D-058, Woodruff G. Fitzhugh, Trustee
11801 Leesburg Pike

William Shoup, Deputy Zoning Administrator, presented staff's determination, as contained in his June 8, 1998, memorandum. He noted that staff did not support this deferral request because the appellant had added several amenities to the facility, without prior approval, and had failed to obtain a Non-Residential Use Permit (NON-RUP) for the existing miniature golf course, basketball court and existing tees within 6-months, which was a condition for the approval of the uses. He pointed out that April 29, 1998, was the deadline for compliance with that condition and based on the history of the appellant's non-compliance, staff would not support the deferral request.

Grayson P. Hanes, Esquire, with the firm of Hazel and Thomas, representing the appellant, gave a brief history of the site. He submitted a time-line paper for the record explaining that a Special Permit Amendment was filed in January to remedy issues that became apparent during the project's construction. He noted that included in the SPA was a request that the time-line item #23, that mandated the NON-RUP be obtained within 6 months, be extended. Mr. Hanes noted the long period of time that it took for County staff to review and accept the application pointing out that it was filed the end of January but was not accepted until the end of April. He summarized the appellant's predicament to be that they were in a "catch 22" and he disagreed with staff's opinion that they had not been diligent in pursuing remedies. Mr. Hanes summarized that the appeal would be moot once the special permit amendment's conditions are implemented and at that time the appeal would be withdrawn. Mr. Hanes requested the Board defer the appeal until the SPA is heard and, at that time, either the NON-RUP will be attained or the project will be abandoned.

Discussion followed among Board members, Ribble and Pammel, justifying the necessity for an appropriate length of time with Mr. Pammel suggesting a date in November.

There being no objection, Mr. Pammel moved to defer Appeal, A 95-D-058, until November 10, 1998, at 9:30 a.m. Mr. Ribble seconded the motion which carried unanimously by a 6-0 vote. Mr. Hammack was not present for the vote.

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At this time, Chairman DiGiulian called the first scheduled Agenda Item.

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Page 542 June 9, 1998, (Tape 1), Scheduled case of:

9:00 A.M. FAIRFAX-BREWSTER SCHOOL, INC., VC 98-M-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing 6.0 ft. high fence to remain in a front yard. Located at 5860 Glen Forest Dr. on approx. 2.21 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((1)) 26.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John B. Connor, Esquire, 1022 N. Fairfax Street, #310, Alexandria, Virginia, the agent for Fairfax-Brewster School, Inc., replied that it was.

Mr. Gregory Russ, Staff Coordinator, made staff's presentation as contained in the staff report dated June 2, 1998. He noted that the Board of Supervisors approved special exception application, SE 97-M-032, in January 1998, which increased the existing school's floor area as well as its enrollment and that the existing 6-foot high chain link fence was depicted on that special exception plat with the development conditions acknowledging that approval of a variance was required to permit a fence in excess of 4 feet.

Mr. Connor voiced his concurrence with Mr. Russ's report. He stated that the fence was pre-existing, for many years, and that it was for security purposes.

Chairman DiGiulian called for speakers, either in support or in opposition and receiving no response, he closed the public hearing.

Mr. Pammel noted that there was a letter of support from the Glen Forest Community Association which was contained in the record. He then moved to approve VC 98-M-033, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the Staff Report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

FAIRFAX-BREWSTER SCHOOL, INC., VC 98-M-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing 6.0 ft. high fence to remain in a front yard. Located at 5860 Glen Forest Dr. on approx. 2.21 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((1)) 26. 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 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The fence has been in existence for some period of time.
3. The property has dual frontage.
4. The request, to allow the fence to remain for security purposes, is simple and reasonable.

5. The request has the support of the Glen Forest Community 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a six foot high fence in the required front yard in the location as shown on the plat entitled "The Fairfax Brewster School" which was prepared by Land Design Consultants, dated July, 1996, as revised through October, 1997, 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 unanimous 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 June 17,

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1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JULIO R. GUTIERREZ, VC 98-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 8.0 ft. high fence to remain in front yard of a corner lot. Located at 5811 Biscayne Dr. on approx. 5,793 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((10)) 56A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Julio R. Gutierrez, 5811 Biscayne Drive, Alexandria, Virginia, replied that it was.

Mr. Juan Bernal, Staff Coordinator, gave staff's presentation as contained in the staff report dated June 2, 1998. He noted that the applicant sought a variance to allow his 8 - foot fence to remain. The Board members had no questions of staff at that time.

Mr. Gutierrez submitted that his variance request was justified because the fence was needed for both security and privacy and because his back yard's topography was sloped. He added that his next-door neighbor had a 6-foot high. He responded to questions from Mr. Dively concerning the age and height of the original fence.

Chairman DiGiulian called for speakers in support of the special permit request.

Mr. James Clark, 5812 Biscayne Drive, Alexandria, Virginia, voiced his support of Mr. Gutierrez's request stating that the fence was needed for privacy, that it had no negative impact on anyone, and a neighbor had a 6-foot high fence and had it for years.

There being no more speakers, Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 98-V-028 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JULIO R. GUTIERREZ, VC 98-V-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 8.0 ft. high fence (**application amended to request a 6-foot high fence**) to remain in front yard of a corner lot. Located at 5811 Biscayne Dr. on approx. 5,793 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((10)) 56A. 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 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot has an exceptional condition in that it is a corner lot.

- 3. A typical side yard fence, by-right, is permitted at a 7-foot height and this request is 6 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a six-foot high fence in the location shown on the plat prepared by L.S. Whitson, dated February 28, 1998, submitted with this application and is not transferable to other land. No fence on the property shall be greater than 6 feet in height.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Mr. Hammack seconded the motion which carried by a unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DOUGLAS & JUDITH FRASER, VC 98-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 6801 Cavalier Trail on approx. 7,617 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 324.

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. Douglas Fraser, 6801 Cavalier Trail, Falls Church, Virginia, replied that it was.

Mr. Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report dated June 2, 1998. He noted that a variance of 14 feet was requested.

Mr. Fraser explained that his lot's topography, the triangular shape, and the setback, limited the buildable area and that the house only had two bedrooms. He was requesting to add another bedroom addition onto the house's rear.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Ribble moved to approve VC 98-P-032 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DOUGLAS & JUDITH FRASER, VC 98-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 6801 Cavalier Trail on approx. 7,617 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 324. 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 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The lot is an unusual shape, being triangular, with the house placed within the 25-foot setback.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition shown on the plat prepared by Kenneth W. White, dated February 4, 1998, 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 unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 547, June 9, 1998, (Tape 1), Scheduled case of:

- 9:00 A.M. CARLOS A. CASTRO, SP 98-M-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.5 ft. from side lot line and accessory structure to remain 3.7 ft. from side lot line. Located at 6452 Holyoke Dr. on approx. 18,794 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 8 and 9. (Concurrent with VC 98-M-031).
- 9:00 A.M. CARLOS A. CASTRO, VC 98-M-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second floor addition 12.9 ft. from side lot line and 24.4 ft. from front lot line and deck 20.2 ft. from front lot line. Located at 6452 Holyoke Dr. on approx. 18,794 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 8 and 9. (Concurrent with SP 98-M-010).

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 A. Castro, 6452 Holyoke Drive, Annandale, Virginia, replied that it was.

Juan Bernal made staff's presentation as contained in the staff report dated June 2, 1998. He explained that the applicant was requesting a variance to permit construction of a deck and a second floor addition and, he clarified, due to an error in the building location, so as to allow the house and shed to remain within the setback requirements, a variance was also being requested.

Mr. Castro explained that the narrowness of his lot precluded where his home could be enlarged and, because his family had grown quite a bit, especially with the birth of his new baby and his parents coming to live with him, the additional room was necessary. He stated that the shed was pre-existing when he purchased his home.

Chairman DiGiulian called for speakers in support of the application.

Ms. Holland, identifying herself as Mr. Castro's neighbor, stated that all Mr. Castro's improvements had been very well done, and were aesthetically pleasing. She urged the Board to approve the requests.

There being no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 98-M-010 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

CARLOS A. CASTRO, SP 98-M-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.5 ft. from side lot line and accessory structure to remain 3.7 ft. from side lot line. Located at 6452 Holyoke Dr. on approx. 18,794 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 8 and 9. (Concurrent with VC 98-M-031). 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 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following development conditions:

- 1. This Special Permit is approved for the location of a dwelling and shed shown on the plat prepared by Kenneth W. White, dated September 23, 1997, revised February 24, 1998 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a unanimous vote of 7-0.

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Mr. Kelley moved to approve VC 98-M-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 2 of the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CARLOS A. CASTRO, VC 98-M-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second floor addition 12.9 ft. from side lot line and 24.4 ft. from front lot line and deck 20.2 ft. from front lot line. Located at 6452 Holyoke Dr. on approx. 18,794 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 8 and 9. (Concurrent with SP 98-M-010). 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 9, 1998; and

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WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The lot is exceptionally narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a second floor addition and deck (balcony) shown on the plat prepared by Kenneth W. White, dated September 23, 1997, revised February 24, 1998, 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 addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

Page 551, June 9, 1998, (Tape 1) CARLOS A. CASTRO, SP 98-M-010 and VC 98-M-031, continued from Page 550

variance. The request must specify 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 unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 551 June 9, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NEAL D. PETERSON, VC 98-Y-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.8 ft. from front lot line and stairs to remain 18.8 ft. from front lot line. Located at 13608 Northbourne Dr. on approx. 14,017 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 54-2 ((6)) 35.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Neal D. Peterson, 13608 Northbourne Drive, Centreville, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, ZED/OCP, made staff's presentation as contained in the staff report dated June 2, 1998. She noted that the requested variance for the covered stoop was 2.2 feet with the steps requiring a 6.2 foot variance. Ms. Schilling responded to Mr. Dively's question concerning the omission of the steps during the house's final building inspection.

Mr. Peterson explained the long, narrow shape of his lot and the fact that the house's size and placement on the lot took up all the space between the required setback from the front lot and the required setback from the rear lot. He stated that a waiver was required to cover the steps which would not obstruct anyone's view and his homeowners' association approved his request.

Chairman DiGiulian called for speakers either in support or in opposition to the request and receiving no response, he closed the public hearing.

Mr. Hammack moved to approve VC 98-Y-029 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

NEAL D. PETERSON, VC 98-Y-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.8 ft. from front lot line and stairs to remain 18.8 ft. from front lot line. Located at 13608 Northbourne Dr. on approx. 14,017 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 54-2 ((6)) 35. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot's shape is shallow toward the rear which justifies the request.
3. There was an error during the home's final inspection in that the steps were missed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (covered stoop) and stairs shown on the plat prepared by Greenhorne and O'Mara, Inc., dated April 5, 1993, as revised through March 12, 1998, 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 covered stoop 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 unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 553 June 9, 1998, (Tape 1), Scheduled case of:

9:00 A.M. T. M. LEONARD, SP 98-V-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.0 ft. from side lot line. Located at 10624 Old Colchester Rd. on approx. 6.48 ac. of land zoned R-1. Mt. Vernon District. Tax Map 113-3 ((1)) 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas M. Leonard, 10624 Old Colchester Road, Lorton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, ZED/OCP, made staff's presentation as contained in the staff report dated June 2, 1998.

Mr. Leonard explained that when he replaced an existing building that he used to store farm equipment and feed for his horses with a larger one, he was informed by the County that it didn't require a permit. However, during the permit process for the electricity, it was discovered that the structure was too close to the property line, and he was now requesting a special permit to allow the storage barn to remain.

Chairman DiGiulian called for speakers and receiving no response, he closed the public hearing.

Mr. Pammel moved to approve SP 98-V-011 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated June 2, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

T. M. LEONARD, SP 98-V-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.0 ft. from side lot line. Located at 10624 Old Colchester Rd. on approx. 6.48 ac. of land zoned R-1. Mt. Vernon District. Tax Map 113-3 ((1)) 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 June 9, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result

of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following development conditions:

- 1. This Special Permit is approved for the location of an accessory structure shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated April 6, 1993, as revised through August 8, 1997, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion which carried by a unanimous vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 17, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 554 June 9, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ERIC J. CANDELORI, VC 98-P-042 Appl. under Sect(s). 18- 401 of the Zoning Ordinance to permit subdivision of 1 lot into 1 lot and 4 outlots with proposed lot 2B having a lot width of 66.63 ft. Located at 2712 Chain Bridge Rd. on approx. 78,667 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 2.(subdivision variance)(Deferred from 5/26/98 For Decision Only)

Chairman DiGiulian stated that there was a question concerning a revised plat which had added several lots, Outlots A, B, C, but the existing lots were still designated as 18A through 21A; he believed that indicated a revision to the lots.

Phyllis A. Wilson, Staff Coordinator, Zoning Evaluation Division (ZED), Office of Comprehensive Planning (OCP), explained the separation of the two existing, independent lots located on Powder Mill Lane.

Discussion followed among the Board members concerning the numbering of the lots.

Susan Langdon, Chief, Special Permit and Variance Branch, ZED/OCP, reminded the Board that the question arose during the public hearing on May 26, 1998, that there was a new area to be incorporated from the existing lot and the Board had requested that the applicant revise his plat to designate the new lots as outlots.

Chairman DiGiulian clarified that the question at hand was that the numbering of the lots should be listed as Lots 18 through 21 not Lots 18A through 21A; that the outlots were to stand alone; and, that the plat did not reflect that fact, the plat showed the outlot areas included within the lot area. Chairman DiGiulian explained to Mr. Candelori exactly what the plat must delineate.

Discussion followed among the Board members on what action to take with Mr. Dively suggesting to approve the application pending receipt of the revised plat but none of the other members concurred. Mr. Pammel submitted that the case could again be considered before the Board as an After Agenda Item with a revised plat and, at that time, a decision would be made. As this met with the Board's consensus, Mr. Hammack moved to defer the decision on VC 98-P-042 for one week which was seconded by Mr. Ribble and carried unanimously by a 7-0 vote.

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Chairman DiGiulian announced that the final item before the Board was an After Agenda Item.

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Page 555, June 9, 1998, (Tape 1), After Agenda Item:

Approval of June 2, 1998 Resolutions

There being no objection, Mr. Pammel moved to approval the June 2, 1998 Resolutions which was seconded by Mr. Dively and carried unanimously by a 7-0 vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 a.m.

Minutes by: Paula McFarland

Approved on: October 20, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 16, 1998. The following Board Members were present: Chairman John DiGiulian, Robert Dively, Paul Hammack, Robert Kelley, James Pammel, and John Ribble. Ms. Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:03 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 557 June 16, 1998 (Tape 1), After Agenda Item:

Request for Intent to Defer, Appeal A 1997-HM-040,
Golf Park Inc., Thoburn Limited Partnership, et al, 1627 Hunter Mill Road

William E. Shoup, Deputy Zoning Administrator, said the case was scheduled for July 7, 1998. He referred to his June 12, 1998, memorandum which stated that the Zoning administrator did not support the deferral request because the issue on appeal was a November 12, 1997, Notice of Violation regarding violations of conditions imposed in the last special permit amendment application, and for commencing authorized activities without a non-residential use permit. Mr. Shoup said the appeal was deferred from March 10, 1998, to July 7, 1998, based on the appellant's representation that a new special permit amendment application would be filed. That application had not yet been filed. The appellant represented in this request that a completed application would be forthcoming within thirty days. Mr. Shoup said time had transpired without any action to transmit a new application. Therefore, he suggested that the appeal remain as scheduled for July 7, 1998.

The appellant, John M. Thoburn, said the reason for the deferral request was because of the workload of the engineer and the new house that had been built near the lights in the Renaissance Community. When the special permit was requested by the appellant, the homeowner requested that berming be added on the back of the property. He said this request placed him in a position where he had to get approval to alter the conservation easement at the back of the property. Mr. Thoburn stated that two site plan amendments had to be obtained. One was approved and the other part had been filed. He stated that with two lights per pole and the poles having a total of 20 lights, staff agreed that he would be allowed the same number of lights on fewer poles. Mr. Thoburn said the condition did not refer to the number of lights per pole. This would not impact the neighborhood. He said he was allowed a snack concession but the County Zoning Administrator had taken the position that selling cola in a paper cup with ice was not a snack food, where as selling soda in a can or bottle was.

Mr. Thoburn stated that at Oak Marr, there were 31 lights on 8 poles, with an average of 4 lights per pole for half the tee stations that Golf Park had.

Jody Bennett, of the Hunter Mill Defense League, said the BZA approved certain conditions in February of 1997, and the community was assured that these conditions would be met. She said Mr. Pammel stated in his closing statement, at the last hearing concerning this case, that if there were violations, the BZA should be notified. Ms. Bennett said there were violations, and the applicant had operated five months with these violations. She asked that the deferral be denied

Mr. Ribble moved to defer the hearing until a later date in August. Mr. Shoup said all the August dates were booked and the earliest date would be in September.

Mr. Hammack wanted to know if the engineer was able to get the application in, would it be possible to hear the case in August. Mr. Shoup said the special permit could not be heard in August. Mr. Ribble moved to defer the appeal to September 15, 1998. Mr. Dively seconded the motion.

Mr. Hammack stated that September 15, 1998, was a long time especially when the appellant was in violation. He stated that some of the violations were substantial, especially the lighting and the planting.

Mr. Ribble made a substitute motion to hear the appeal on August 25, 1998. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

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8:00 P.M. SUSAN GRISSOM AND FRANK FOSTER, VC 98-V-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.2 ft. from one side lot line and additions 5.1 and 6.1 ft. from other side lot line. Located at 1927 Summit Terrace on approx. 6,898 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(10) 19.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Foster and Susan Grissom, 1927 Summit Terrace, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested variances to permit the construction of a room addition, an enclosure of a screened porch, the construction of a second addition, and the construction of a second-story room addition. The addition and the enclosure would be located 5.2 feet from the left side lot line, the other addition and second-story addition would be located 5.1 feet and 6.1 feet from the right side lot line. A minimum side yard of 10 feet was required; therefore, variances of 4.1 feet, 4.9 feet, and 3.9 feet were respectively requested.

Mr. Foster said when they acquired the property, which had the house that was built in 1934, it was their understanding that the original setback was 5 feet from the side lines. He said their intention was to make additions to the living quarters with a bathroom downstairs along with other building improvements. Mr. Foster said the side dimensions would not be expanded beyond the current status.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 98-V-034, for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN GRISSOM AND FRANK FOSTER, VC 98-V-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.2 ft. from one side lot line and additions 5.1 and 6.1 ft. from other side lot line. Located at 1927 Summit Terrace on approx. 6,898 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(10) 19. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for a variance.
3. This is an older subdivision where the side lot lines converge toward the rear of the lot which limits the space for any further development.
4. The additions are extensions of existing structures already on the property.
5. A narrower structure already exists on the property which will not change the zoning district and will be in harmony with the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the room additions shown on the plat prepared by Larry Scarty, dated April 10, 1992, revised by Rebecca L.G. Bostick, dated November 11, 1997, 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 and Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. WILLIAM L. AND GAIL H. PURVIS, VC 98-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 8511 Hitching Post Ln. on approx. 11,589 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(5) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William L. Purvis, 8511 Hitching Post Lane, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition 3.5 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 8.5 feet was requested.

Mr. Purvis stated that he wanted to improve the exterior and interior of his home in order to develop the potential usage and value of the property. He said the garage addition would be a critical element in this plan because it would facilitate and compliment all other conforming uses that would not require the approval of the BZA.

Mr. Purvis stated that if the Ordinance was strictly applied, it would prohibit him from realizing his goals and this would present a hardship. He said this would unreasonably require him to consider alternatives that would be of lesser use, benefit, and compatibility with the neighborhood.

Mr. Purvis stated that the use requested was common in the Riverside Gardens neighborhood and that about 23 percent of the neighborhood, which is approximately 231 properties, have garages. He said this use was not a special privilege nor for special convenience, but that the use was reasonable and common. Mr. Purvis said the granting of the variance would grant him usage and benefit that was now lost because of the absence of a garage and it would add value to his property.

Mr. Ribble stated that he was a resident of this subdivision and none of the garages were of a 40-foot depth.

Mr. Purvis said he did not intend to extend the garage 40 feet in depth but that he planned to extend within a reasonable length behind the house to allow for storage, and the wall would serve as part of a deck he planned to build.

Mr. Hammack said it appeared from the plat that the garage was 27 feet long from the front of the house to the rear of the house. Mr. Purvis replied that it was. Mr. Hammack said the width appeared to be 15.9 feet from the house to the property line. Mr. Purvis said 15.9 feet would be a narrow garage to get in and out of and also to provide storage for his garden tools and other tools.

Mr. Hammack said garages were normally 24 feet in depth and less than the length of the applicant's house.

Mr. Ribble said he had problems with the bulk of the carport and not the 3.5 feet because there were carports that were 3.5 feet.

Mr. Purvis said he wanted to reach a negotiable solution because he did not have enough room in his garage as it currently was. He said he wanted to match the length of the garage with the length of the house, or go a reasonable amount back from the house.

Mr. Hammack asked the applicant to describe how far away from his house the adjacent house was from the side lot line. Mr. Purvis said he believed the adjacent house was about 15 or 16 feet from the side lot line. Susan Langdon, Chief, Special Permit and Variance Branch, replied by saying the house was approximately 15 feet from the side lot line.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 98-V-036, for the reasons set forth in the Resolution. Mr. Pammel further

stated that there were too much bulk that was adjacent to the adjoining property, and it was his belief that the Board had not approved anything of this nature within recent history. He said the history that was provided by staff showed most of the applications for variances were for carports with an opening.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM L. AND GAIL H. PURVIS, VC 98-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 8511 Hitching Post Ln. on approx. 11,589 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(5) 5. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not presented testimony that supports the request for a variance.
3. There is too much bulk that is adjacent to the adjoining property.
4. This Board has not approved an addition of this size this close to the lot line in recent history.
5. The history provided by staff was for variances for carports with open sides.

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 5-0-1. Mr. Kelley abstained. Ms. Gibb was absent from the meeting. The one year wait period for refileing was waived.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998.

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Page 502 June 16, 1998 (Tape 1), Scheduled case of:

8:00 P.M. NAYANA AND ROSENAL BETCHAR, SP 98-Y-012 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a child care center. Located at 13923 Braddock Rd. on approx. 21,755 sq. ft. of land zoned C-8, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 48. (Concurrent with VC 98-Y-050).

8:00 P.M. NAYANA AND ROSENAL BETCHAR, VC 98-Y-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 20.5 ft. from front lot line. Located at 13923 Braddock Rd. on approx. 21,755 sq. ft. of land zoned C-8, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 48. (Concurrent with SP 98-Y-012).

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, Donald Smith, 5618 Wharton Lane, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicants requested approval of a special permit to establish a child care center for a maximum of 50 children. The proposed hours of operation would be 7:30 a.m. to 6:30 p.m., Monday through Friday. The proposed changes to the structure on site included an addition of a deck on the rear of the structure, fencing for the proposed play area, and parking lot reconfiguration improvement. A total of six employees were proposed and all meals would be catered. The applicants also requested the approval of a variance to permit the existing porch structure to remain 20.5 feet from the front lot line. Subject to the Development Conditions in Appendix 1 of the staff report, staff concluded that the proposed child care center was in harmony with Comprehensive Plan and was in conformance with applicable Zoning Ordinance requirements. Staff recommended approval of the application.

Mr. Smith stated that the applicants reviewed and had agreed with the Development Conditions of the staff report. Concerning the variance, Mr. Smith stated that the house was built in the 1930s, ten years prior to Fairfax County Zoning Ordinance and had been used as a commercial building since construction. Mr. Smith further stated that it was his belief that all the required standards of the Zoning Ordinance had been met.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP 98-Y-012 and VC 98-Y-050 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

NAYANA AND ROSENAL BETCHAR, SP 98-Y-012 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a child care center. Located at 13923 Braddock Rd. on approx. 21,755 sq. ft. of land zoned C-8, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 48. (Concurrent with VC 98-Y-050). 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 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the general standards for special permit uses.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303, 8-305, and 18-404 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicants, Nayana Betchar and Rosental Betchar 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., December 17, 1997, as revised through April 21, 1998, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The maximum daily enrollment shall be limited to fifty (50).
6. A minimum of thirteen (13) parking spaces shall be provided as shown on the special permit plat. The parking spaces shall be delineated by concrete wheel stops. All parking shall be limited to on site.
7. The parking lot and ingress/egress points shall be constructed in conformance with the requirements of the Public Facilities Manual, to the satisfaction of DEM. The entrance shall be paved a minimum of twenty-five (25) feet into the interior of the site.
8. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998. 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

NAYANA AND ROSENLAL BETCHAR, VC 98-Y-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 20.5 ft. from front lot line. Located at 13923 Braddock Rd. on approx. 21,755 sq. ft. of land zoned C-8, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 48. (Concurrent with SP 98-Y-012). 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 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Page 565, June 16, 1998, (Tape 1) NAYANA AND ROSENLAL BETCHAR, SP 98-Y-012 and VC 98-Y-050, continued from Page 564

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an existing structure as shown on the plat prepared by Alexandria Surveys, Inc., dated December 17, 1997, as revised through April 21, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 565, June 16, 1998 (Tape 1), Scheduled case of:

8:00 P.M. KINGSTON CHASE HOMEOWNERS ASSOCIATION, SPA 79-D-241-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-D-241 for a community swimming pool to permit tennis courts, site modifications and modifications to development conditions. Located at 1623 Hiddenbrook Dr. on approx. 2.48 ac. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-4 ((14)) E1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kathie Pfeffer-Hahn, 1512 Hiddenbrook Drive, Herndon, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested approval of the tennis court over a portion of the parking lot which was constructed but had not been approved by the special permit. In addition, the application requested the special permit for error in building location to allow the tennis court to remain 10 feet from the rear lot line. Staff recommended approval subject to the Development Conditions contained in the staff report.

Ms. Pfeffer-Hahn said the Homeowner's Association wanted to provide a tennis court for the homeowners and their children. She said it was her understanding from Fairfax County that the number of parking lot spaces would not be a problem. Ms. Pfeffer-Hahn said she spoke to the contractor who was contracted to do the tennis court and he told her a permit was not required; she later found out the contractor was incorrect. She said she read the staff report and agreed with the Development Conditions.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 79-D-241-02, for the reasons set forth in the Resolution, subject to the Development Conditions contained in Appendix 1 of the staff report dated June 9, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

KINGSTON CHASE HOMEOWNERS ASSOCIATION, SPA 79-D-241-02 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to amend SP 79-D-241 for a community swimming pool to permit tennis courts, site modifications and modifications to development conditions. Located at 1623 Hiddenbrook Dr. on approx. 2.48 ac. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-4 ((14)) E1. 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 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-403 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1623 Hiddenbrook Drive (2.48 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 Greenhorns and O'HARA, Inc. as revised by Charles E. Powell, Land Surveyor dated May 1, 1980, as revised through February 20, 1998, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of 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 hours of operation for the facility shall be from 8:00 a.m. to 9:00 a.m. on Saturday, and from 9:00 a.m. to 9:00 p.m. the rest of the week.

6. All barrier requirements shall be waived in favor of that shown on the plat. The transitional screening shown on the approved site plan shall be deemed to satisfy the requirement for Transitional Screening Type 1, with the exception that supplemental landscaping using evergreen plant materials shall be provided along the northern property boundary with a landscaped width of 25 feet, and along the eastern property boundary where feasible to screen the view of the tennis court from adjacent residences, subject to the review and approval of the Urban Forestry Branch of DEM.
7. After-hour parties for the swimming pool shall be governed by the following:
 - Limited to six (6) per season.
 - Limited to Friday, Saturday and pre-holiday evenings.
 - Shall not extend beyond 12:00 midnight.
 - A written request at least ten days in advance and receipt of prior 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.
 - Each party shall comply in all respects with the Fairfax County Noise Ordinance and noise from such parties shall be controlled to prevent any adverse impact upon the contiguous properties.
8. The maximum number of family memberships shall be 538. The maximum number of employees permitted on-site at any one time shall not exceed 13.
9. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. All parking shall be on-site.
10. The security light shall be directed so as to prevent light from projecting off the property. If not presently provided, shields shall be installed, within thirty (30) days of this approval, to prevent the light from projecting off the property. If it is determined by the Zoning Administrator that the lights are still impacting adjacent properties, the light standard shall be reduced to twelve (12) feet in height. The Zoning Enforcement Branch shall inspect to determine if this requirement has been met.

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, 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. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 567, June 16, 1998 (Tape 1), Scheduled case of:

8:00 P.M. ERIC J. CANDELORI, VC 98-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 1 lot and 4 outlots with proposed lot 2B having a lot width of 66.63 ft. Located at 2712 Chain Bridge Rd. on approx. 78,667 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 2.(subdivision variance)

This case was deferred for decision only. Chairman DiGiulian called the applicant, Mr. Candelori, to the

podium for the decision of the case which was heard on May 26, 1998.

Mr. Ribble made a motion to approve the revised plat subject to the engineer correcting the designations for the tax map references on the adjacent properties that were not part of the original plat. He said this would be recorded.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC J. CANDELORI, VC 98-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 1 lot and 4 outlots with proposed lot 2B having a lot width of 66.63 ft. Located at 2712 Chain Bridge Rd. on approx. 78,667 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1))
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 June 16, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a

strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of one (1) lot into one (1) lot and four (4) outlots, proposed Lot 2B having a lot width of 66.63 feet, as shown on the plat prepared by Ballato & Associates, P.C. dated June 17, 1998. All development shall be in conformance with this plat as qualified by these development conditions.
2. Any accessory uses or accessory structures established on the proposed lot and outlots shall conform to Zoning Ordinance provisions.
3. Right-of-way measuring sixty (60) feet from the centerline of Chain Bridge Road shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County. All required ancillary easements along the frontage of the site shall be conveyed to the Board of Supervisors at the time of dedication.

Pursuant 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. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 569 June 16, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for Accotink Unitarian
Universalist Church, SPA 85-S-083-2

Mr. Dively asked staff what was the earliest date the case could be scheduled. Susan Langdon, Chief, Special Permit and Variance Branch, said August 18 which was a night meeting, had three special permit and variance cases and three appeal cases scheduled. Mr. Dively wanted to know what was the application acceptance process. Ms. Langdon replied saying that the application was not completed and accepted until June 12, 1998, and at that time, the 90-day period started. Ms. Langdon said the applicant did not submit a plat with the application and that took time for the applicant to obtain the plat. She further stated that some of the things that slowed the application acceptance process were the substantial amount of applications being accepted which included rezoning, special exception, variance, and special permit.

Mr. Dively stated that the applicant had a reasonable request because of a school transition. Mr. Pammel moved to hear the case on August 25, 1998. Mr. Hammack seconded the motion for the purpose of discussion. Mr. Hammack inquired about the number of children that were in the pre-school. Ms. Langdon stated that there were 40 children. The motion carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Pammel requested that the case that was heard at the beginning of the meeting, Appeal Application, A 1997-HM-040, Golf Park Inc., Thoburn Limited Partnership, et al, 1627 Hunter Mill Road, be scheduled for August 25, 1998, and he asked staff to notify the appellant.

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Page 570, June 16, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for Cecelia Fairchild, VC 98-L-066

Mr. Hammack moved to deny the request for Out-of-Turn Hearing for the subject application. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 570, June 16, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for Steven M. Helmrich, SP 98-S-026

Mr. Hammack said the basis for the request was to build a stable prior to fall and winter. He said the case was currently scheduled for August 11, 1998. He moved to deny the request for Out-of-Turn Hearing. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 570, June 16, 1998 (Tape 1), After Agenda Item:

Approval of June 9, 1998, Resolutions

Mr. Pammel made a motion to approve the June 9, 1998, Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 8:53 p.m.

Minutes by: Ann-Marie Wellington

Approved on: October 6, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 30, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Robert Kelley; James Pammel; and, John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 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 571, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. HARRY E. BLEISTEIN, JR., VC 98-L-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 6205 Thomas Dr. on approx. 12,569 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13))(D) 601.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harry Bleistein, 6205 Thomas Drive, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an attached garage to be located 10.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2.0 feet was requested.

Mr. Bleistein presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built over 33 years ago. Mr. Bleisten said the lot was pie shaped. He stated that the addition would be compatible with the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-L-039 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HARRY E. BLEISTEIN, JR., VC 98-L-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 6205 Thomas Dr. on approx. 12,569 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13))(D) 601. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The shape of the lot is irregular.
4. The variance request was minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an attached garage addition shown on the plat prepared by Kenneth W. White, dated January 28, 1998, 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. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Dively were not present for 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 July 8, 1998. This date shall be deemed to be the final approval date of this variance.

Page 573, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RUSSELL A. BIKOFF, VC 98-D-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((12)) 140.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Russel Bikoff, 1825 MacArthur Drive, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a deck to be located 7.2 feet from the side lot line. A minimum side yard of 15.0 feet is required; therefore, a variance of 7.8 feet was requested.

Mr. Bikoff presented the variance request as outlined in the statement of justification submitted with the application. He thanked the Board and staff for reviewing his application. Mr. Bikoff noted that he had previously been granted a variance to build an addition on the side of the house and a special permit to leave the deck and the deck stairs a distance of 9.2 feet from the side lot line. He said at that time extending the deck towards the side lot line was not part of the previous applications. Mr. Bikoff said in the course of planning the addition, they decided to extend the deck toward the side lot line, in tandem with the addition to the house. Mr. Bikoff requested a waiver of the 8-day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 98-D-052 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RUSSELL A. BIKOFF, VC 98-D-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.2 ft. from side lot line. Located at 1825 MacArthur Dr. on approx. 11,640 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((12)) 140. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 1998; 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 11,640 square feet.
4. The applicant presented testimony indicating compliance with the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;

- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck to be shown on the plat prepared by S. Ann Shapiro, dated June 15, 1997, revised by James J. Hricko, dated April 17, 1998, 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 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. Mr. Hammack was absent from the meeting.

Ms. Gibb moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 574, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. POWERHOUSE PAINTBALL ARENA, INC. SP 98-M-021 Appl. under Sect(s). 5-603 and 8-501 of the Zoning Ordinance to permit indoor recreational use. Located at 6714-A Industrial Rd. on

approx. 4.5 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F.

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 Szakos, 15214 Sovereign Place, Chantilly, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The special permit requested was to allow an indoor recreational use for a paintball arena in a 12,800 square foot area within an industrial warehouse building containing 62,400 square feet of gross floor area. A maximum of four employees were proposed for the use. There would be no physical changes made to the property.

Mr. Szakos presented the special permit request as outlined in the statement of justification submitted with the application. He said there was no such facility in the area and that he wanted to provide a safe environment for the sport of paintball. Mr. Szakos said the location had other recreational facilities on site and there would be no loitering, vending or eating in the facility. He said the facility previously had a special permit in effect which was the reason he chose the subject location. Mr. Szakos requested a waiver of the 8-day waiting period.

Mr. Dively asked the applicant to explain "paintball." The applicant explained that it was similar to laser tag, but a water soluble gelatin ball of paint is used which breaks on contact. He said it is like playing tag, once you hit you are out of the game.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-M-021 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

POWERHOUSE PAINTBALL ARENA, INC. SP 98-M-021 Appl. under Sect(s). 5-603 and 8-501 of the Zoning Ordinance to permit indoor recreational use. Located at 6714-A Industrial Rd. on approx. 4.5 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. 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 lessee of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-603 and 8-501 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this

Board, and is for the location indicated on the application, 6714 -A Industrial Road, consisting of 12,800 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 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 Patton, Harris, Rust and Associates, dated August 8, 1994, revised by Stephen C. Szakos, dated, revised received May 7, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation shall be: 4:00 p.m. to 11:00 p.m. on Monday through Thursday; 4:00 p.m. to 1:00 a.m. on Fridays; 10:00 a.m. to 1:00 a.m. on Saturdays; and, 12:00 noon to 9:00 p.m. on Sunday.
5. The maximum number of employees on-site at one time for the paintball arena use shall not exceed four.
6. There shall be a minimum of fourteen (14) parking spaces provided for this use. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), a parking tabulation shall be submitted to and approved by the Zoning Permit Review Branch (ZPRB) which shows that the required parking for all uses can be provided in the 4.5 acre site, or the size of the proposed use shall be limited to provide adequate parking. All parking shall be on site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, with out notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Ribble moved to waive the 8-day waiting period. Mr. Dively 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 June 30, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 576, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GRACE EVANGELICAL LUTHERAN CHURCH, SPA 74-M-116 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-M-116 for school of general education to permit church and related facilities, building additions, site modifications, increase in seating capacity and enrollment, and change in development conditions. Located at 3233 Annandale Rd. on approx. 4.95 ac. of land zoned R-2. Mason District. Tax Map 60-2 ((6)) 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. Sara Hall, Blankingship & Keith, P.C., 4020 University Drive, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The special permit requested was to increase enrollment, permit church and related facilities with increased seating capacity, building additions, site modifications and change in development conditions. The building construction was proposed to be completed in two phases. Phase 1 of the construction was shown on the Plat, except for the proposed second story addition to the sanctuary area which would be constructed as Phase 2. The application is in harmony with the Comprehensive Plan and staff recommended approval with the implementation of the revised Proposed Development Conditions dated June 29, 1998.

Ms. Hall, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the church was requesting to add three classrooms to the school, increase the maximum permissible enrollment to 99 students, add an elevator and an addition to house offices on the first floor and expand the sanctuary on the second floor. Ms. Hall said the applicant had an informational meeting with the neighbors and the neighbors to the east requested a 6 foot high board on board fence to be placed on the property line to stop foot traffic and noise. The revised plat depicted the subject 6 foot fence. The revised plat was presented to the Board at the public hearing.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SPA 74-M-116 for the reasons noted in the Resolution subject to the Revised Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GRACE EVANGELICAL LUTHERAN CHURCH, SPA 74-M-116 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-M-116 for school of general education to permit church and related facilities, building additions, site modifications, increase in seating capacity and enrollment, and change in development conditions. Located at 3233 Annandale Rd. on approx. 4.95 ac. of land zoned R-2. Mason District. Tax Map 60-2 ((6)) 8. 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 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- * 1. This approval is granted to the applicant, Grace Evangelical Lutheran Church and is not

transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

- * 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Gallivant, Hawes & Jeffers, dated March, 26, 1998, as revised through June 29, 1998, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The maximum daily enrollment for the private school of general education shall be limited to ninety-nine (99) children, in kindergarten through eighth grade. Maximum hours of operation for the private school of general education shall be limited to 8:30 A.M. through 3:30 P.M. Maximum hours of operation for after school child care shall be limited to 3:30 through 5:30 P.M.
6. Eighty-three (83) parking spaces shall be provided as shown on the special permit plat. All parking shall be limited to on site.
7. Any required installation of fencing associated with the play area, and/or any other health or safety issues identified by the Fairfax County Health Department, shall be completed and resolved to the satisfaction of the Health Department prior to the issuance of the Non-Residential Use permit for the new school facility.
8. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance. Non-conforming signs shall be removed.
9. The church seating capacity shall be limited to 260.
10. If a stormwater management/BMP waiver is granted by DPW & ES, the conservation easement shown on the Special Permit Plat shall be officially recorded within 120 days from the date of site plan approval. The boundaries of the conservation easement may be adjusted, to the satisfaction of DPW & ES, to permit the location of a storm water management basin on the property without the requirement of a special permit amendment. If the waiver request is denied, the conservation easement shown on the Special Permit Plat shall not be required.
11. Prior to site plan approval, the applicant shall conduct an on-site meeting with the Urban Forester for an assessment of the proposed tree preservation and supplementation plan, as depicted on sheet 2 of 3, to ascertain the most viable and effective tree species for screening purposes. Final choice of tree and shrub species to achieve effective screening shall be at the discretion of the Urban Forester.
12. All supplemental trees proposed to be planted on the site shall be a minimum of six (6) feet in height at the time of planting. All plantings installed pursuant to the special permit amendment plat, and all existing trees within the site peripheral transitional screening area, shall be continuously maintained and replaced as necessary with equivalent species at a minimum height of six (6) feet at time of planting.
13. A modification of the transitional screening requirements shall be permitted in favor of existing and proposed vegetation, as depicted on sheet 2 of 3 of the special permit plat. Prior to the issuance of the Non-residential Use Permit for the school, all proposed supplemental plantings shall be

installed, to the satisfaction of the Urban forester. A modification of the barrier requirement for the perimeter of the site shall be permitted in favor of conditions shown on the Special Permit Amendment Plat.

- 14. All exterior lighting shall be shielded in such a manner to prevent the light from projecting beyond the site onto adjacent residential properties.

These development conditions incorporate and supercede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use 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 5-0. Mr. Ribble was not present for 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 July 8, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 579, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. VIVIAN A. CROSS, VC 97-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 6423 Second St. on approx. 11,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8))(D) 28.

Julie Schilling, Staff Coordinator, noted that the notices were not in order. Mr. Kelley moved to defer the subject application to the morning of September 15, 1998, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 579, June 30, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RODNEY W. FRAME AND KAY FRAME, SP 98-M-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to allow an addition to remain 12 ft. from side lot line. Located at 6408 Lakeview Dr. on approx. 14,600 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 146. (Concurrent with VC 98-M-030).

9:00 A.M. RODNEY W. FRAME, VC 98-M-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 12.0 ft. from side lot lines and deck 7.0 ft. from side lot line. Located at 6408 Lakeview Dr. on approx. 14,600 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 146. (Concurrent with SP 98-M-020). (Moved from 5/19/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry L. Berben, 1443 Emerson Avenue, McLean, Virginia,

replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for an error in building location to permit an addition to remain 12.0 feet from the side lot line. A minimum side yard of 15.0 feet is required; therefore, the amount of the error is 3.0 feet or 20%.

The applicant also requested a variance to permit construction of a second story addition 12.0 feet from the side lot line and a deck 7.0 feet from the side lot line. A minimum side yard of 15.0 feet is required; therefore, variances of 3.0 feet and 8.0 feet respectively, were requested.

Mr. Berben, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the applications. He said the house was built in 1964 under R-3 Zoning and in 1972 the zoning was changed to R-2; thereby, changing the side yard setbacks from 12 feet to 15 feet. Mr. Berben said he was issued a permit to construct renovations and additions and was issued a stop work order because the County issued the permit in violation of setback requirements. Mr. Berben said the carport was built in violation of the side yard setback and the special permit application was to allow the carport to remain in place.

Chairman DiGiulian called for speakers.

David Feld, 6405 Lakeview Drive came forward to speak in opposition to the application. Mr. Feld expressed concerned about the neighbors not being informed about the applications. He said the additions would diminish the openness of the environment and obstruct his view of the lake. Mr. Feld said denying the addition would not cause the owner unreasonable hardship. He stated the applicants were adding significant additions when there were other options available to them.

Mr. Kelley asked Mr. Feld if he understood that he had no right to a scenic easement. Mr. Feld said he understood but wanted to express to the Board that it was about the enjoyment of his property. Mr. Feld added that the community was special and the reason he purchased his home was to be on the lake.

Arnold Kunkler, 6407 Lakeview Drive, came forward to speak in opposition, stating that the height of the subject addition would be inconsistent with the adjacent properties. He said it would reduce the quiet space that the neighborhood enjoyed. Mr. Kunkler added that the additions would interrupt the enjoyment of his property.

Ms. Gibb asked if the neighboring properties were all flat-roofed. Mr. Kunkler said most of the houses were flat-roofed.

Mr. Dively noted that there would be no difference as far as height was concerned. Mr. Berben concurred stating that the only difference was the additional 2.0 feet for the roof on the second story, but said that would not affect the outward appearance of the structure.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 98-M-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RODNEY W. FRAME AND KAY FRAME, SP 98-M-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to allow an addition to remain 12 ft. from side lot line. Located at 6408 Lakeview Dr. on approx. 14,600 sq. ft. of land zoned R-2.

Mason District. Tax Map 61-3 ((14)) 146. (Concurrent with VC 98-M-030).

Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated December 31, 1998, as revised through April 6, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 98-M-030 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RODNEY W. FRAME, VC 98-M-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 12.0 ft. from side lot lines and deck 7.0 ft. from side lot line. Located at 6408 Lakeview Dr. on approx. 14,600 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 146. (Concurrent with SP 98-M-020). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. There is a topographical situation.
4. The width of the lot is narrow when contrasted with the requirements in an R-2 District.
5. The application meets all the requirements of the prior zoning district and to force compliance with the present standards of the R-2 District would be a hardship on the applicant.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a second story addition and deck shown on the plat prepared by Kenneth W. White, dated December 31, 1997, as revised through April 6, 1998, 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 second story addition and deck shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and 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 July 8, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 583, June 30, 1998, (Tape 1), Scheduled case of:

- 9:00 A.M. LUTHERAN EVANGELICAL CHURCH OF THE REDEEMER, GEORGE W. EVANS JR. PASTOR, SPA 79-D-143-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 79-D-143 for church and related facilities to permit church with a child care center with enrollment of 100 or more students daily, increase in seating capacity, building additions, site modifications and modifications to development conditions. Located at 1545 Chain Bridge Rd. on approx. 5.70 ac. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((1)) 12. (Concurrent with VC 98-D-012). (MOVED FROM 5/5/98).
- 9:00 A.M. LUTHERAN EVANGELICAL CHURCH OF THE REDEEMER, GEORGE W. EVANS JR. PASTOR, VC 98-D-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from front lot line. Located at 1545 Chain Bridge Rd. on approx. 5.70 ac. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((1)) 12. (Concurrent with SPA 79-D-143-2). (MOVED FROM 5/5/98).

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 Keefe, 11441 Tanbark Drive, Reston, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a church with a child care center with an enrollment of 200 students, and expansion of the church facilities in two phases. The applicant also requested a variance to allow parking spaces to remain less than 10 feet from the front lot lines of both parking lots adjacent to Westmoreland Street and Chain Bridge Road. In staff's evaluation the proposed development incorporated many of the recommendations of the newly adopted design recommendations for the McLean Community Business Center (CBC). Ms. Schilling noted that the applicant submitted suggested revisions for Development Conditions #8, #10 and #13 which were received by staff on June 29, 1998, but that staff did not have a sufficient amount of time to fully evaluate each proposed change. She said staff was concerned that the changes would affect the resolution of issues pertaining to the stormwater detention facility, barrier fencing, and the height of the structures on the site.

Mr. Dively asked staff how long would it take for them to review the revised development conditions submitted by the applicant. Staff replied approximately 2 weeks because the application would have to be reviewed at staffing.

Mr. Keefe, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the applications. Mr. Keefe explained what was proposed during Phase 1 and Phase 2 of the construction. He said the applicant had met with the McLean Citizen's Association, the McLean Planning Committee, and the neighbors which all supported the applications. Mr. Keefe said he would like some flexibility in the language for Condition #8. He stated that in Condition #10 the southern boundary was well landscaped currently with a lot of deciduous trees and a board on board fence, and as presented in the development conditions of the staff report, seemed to be redundant to the applicant. Mr. Keefe stated that given the newly proposed landscaping, the applicant felt the property would be sufficiently landscaped and noise attenuated. He expressed concern with the height limitation in Phase 2 of the construction as stated in Condition #13.

Mr. Dively asked Mr. Keefe to elaborate on the changes the applicant proposed for Condition #13. Mr. Keefe explained that Phase 2 would be 8-10 years down the road. He said during the time of sanctuary expansion they would like the opportunity to create a design statement. He said the 38 feet limitation worked for the rear of the building, but that the zoning district allowed for 60 feet and the applicant was willing to drop the height to 52 feet. Mr. Keefe explained that this was a design option the applicant would like to have for the future.

Chairman DiGiulian closed the public hearing.

Chairman DiGiulian asked Mr. Keefe if he agreed with the design standards from the McLean Community Business Center. Mr. Keefe replied yes.

Mr. Kelley asked staff why Condition #9 was included in the conditions. He said he thought the Board of Zoning Appeals (BZA) had agreed to leave references of other groups out of conditions. Ms. Schilling replied that Condition #9 was part of the Comprehensive Plan recommendations that were recently adopted by the Board of Supervisors.

Chairman DiGiulian said he agreed with Mr. Kelley about leaving the references out.

Mr. Pammel disagreed, stating that one of the requirements for a special permit application is that it be in compliance with the Comprehensive Plan. He said it was adopted by the Board of Supervisors and he felt the BZA did not have a choice.

Chairman DiGiulian stated that it had to be in conformance with the requirements of the Comprehensive Plan. He said had never seen in the Comprehensive Plan where the applicants had to comply with those specific guidelines. He asked staff if they could tell the BZA where that was stated.

Ms. Schilling said the staff report referenced the complete land use memo that was contained in Appendix 6 of the staff report and this outlined the Plan language.

Mr. Dively commented that under other circumstances this issue might be of concern, but that the applicant was ably represented and if they have agreed to the condition he didn't see that this was a point that needed to be decided during this case.

Chairman DiGiulian said he felt the BZA would set a bad precedent if they didn't do it now.

Mr. Dively stated that it would not be a precedent if it was based on the agreement of the applicant.

Chairman DiGiulian said it would be something staff would use as a precedent. He said he didn't see in the land use memo where it was required under the Comprehensive Plan that the applicant had to comply with those guidelines.

Mr. Kelly stated that this was the same type of development condition that lead to peach cobblestone somewhere. The Chairman concurred.

Chairman DiGiulian closed the public hearing again.

Mr. Dively moved to approve SPA 79-D-143-2 for the reasons noted in the Resolution subject to the Revised Development Conditions. He said he felt that this was a very well thought out plan. Mr. Dively said the applicant worked well with the community.

Mr. Pammel seconded the motion.

Mr. Kelley moved to delete Condition #9. The Chairman seconded that motion. Mr. Kelley said he felt it was a terrible precedent and that he felt so strongly about it that he would vote against the entire application if the condition remained. The motion failed by a vote of 2-3 with Mr. Pammel, Mr. Dively and Ms. Gibb voting nay.

The original motion failed by a vote of 3-2 for a lack of 4 votes with Chairman DiGiulian and Mr. Kelley voting nay.

Mr. Dively said he couldn't believe the BZA was doing this to the church and consequently made a second motion because he felt it was in the best interest of the County and the church. He said to do otherwise would commit an injustice. Mr. Dively made the same motion with an amendment to Condition #9.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUTHERAN EVANGELICAL CHURCH OF THE REDEEMER, GEORGE W. EVANS JR. PASTOR, SPA 79-D-143-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 79-D-143 for church and related facilities to permit church with a child care center with enrollment of 100 or more students daily, increase in seating capacity, building additions, site modifications and modifications to development conditions. Located at 1545 Chain Bridge Rd. on approx. 5.70 ac. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((1)) 12. (Concurrent with VC 98-D-012). 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 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- *1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1545 Chain Bridge Road (5.7 acres), and is not transferable to other land.
- *2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust and Associates P.C. dated January 1998, as revised through May 26, 1998, and approved with this application, as qualified by these development conditions.
- *3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. Phase I of the construction of the church and child care center shall consist of a maximum of 294 seats in the main area of worship, a maximum daily enrollment of 200 children, and a minimum of 106 parking spaces. Phase II of the construction of the church shall consist of a maximum of 776 seats in the main area of worship and 194 parking spaces, or the number of parking spaces approved in accordance with a parking reduction approved by the Department of Public Works and Environmental Services. All parking shall be on-site in the location shown on the approved plat.
- 6. The entrance drive providing access to Chain Bridge Road, opposite Cedar Lane shall be constructed to restrict turning movements to right-in/right out only.
- 7. With the construction of Phase II of development, the parking lots shall be monitored by the applicant during church services and related activities in order to ensure that all spaces are filled and close the parking lots when filled. When the first lot is filled, the driveway entrances shall be blocked and signs posted directing vehicles to use the other lot.
- 8. If an above ground stormwater management facility is required at the northwest corner of the site, the applicant shall provide Best Management Practices in the form of a bio-retention facility or some similar facility to be constructed in the location shown on the approved special permit plat, subject to the review and approval of the Department of Public Works and Environmental Services (DPW & ES). Landscaping shall be provided in and around the facility as shown on the approved plat, and as required by DPW & ES for the bio-retention facility.
- 9. A landscape plan shall be prepared and implemented, subject to the review and approval of the Urban Forestry Branch of DPW & ES.
- 10. Barrier requirements along the northern and eastern property boundaries are waived. Existing vegetation along the southern property boundary shown on the approved special permit plat shall be deemed to meet Transitional Screening requirements if supplemented by evergreen

plant materials to provide an unbroken landscape screen, subject to the review and approval of the Urban Forestry Branch of DPW & ES. The board-on-board fence for the southern boundary may be an option for this area.

11. Irrespective of any signs shown on the approved plat, all signs shall be provided in accordance with the provisions of Article 12, Signs, of the Zoning Ordinance.
12. The hours of operation for the child care center shall be limited to 6:30 a.m.-6:30 p.m., Monday through Friday.
13. The architecture for Phase I shall be consistent with that shown on the elevation contained in Attachment I. The maximum building height for Phase II shall not exceed 52 feet. The architecture of Phase II construction shall be consistent with the architectural style shown on the attached elevation for Phase I.

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. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively moved to approve VC 98-D-012 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LUTHERAN EVANGELICAL CHURCH OF THE REDEEMER, GEORGE W. EVANS JR. PASTOR, VC 98-D-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from front lot line. Located at 1545 Chain Bridge Rd. on approx. 5.70 ac. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((1)) 12. (Concurrent with SPA 79-D-143-2). 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 June 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the parking lots shown on the plat prepared by, Patton Harris Rust and Associates P.C. dated January 1998, as revised through May 26, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and 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 July 8, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GREAT FALLS UNITED METHODIST CHURCH, SPA 83-D-085 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to amend SP 83-D-085 for nursery school to permit church and related facilities, increase in number of students, modification to development conditions, increase in land area, and reduction to minimum yard requirements based on error in building location to permit church to remain 3.8 ft. from side lot line and accessory structure 6.2 ft. from side lot line. Located at 10100 Georgetown Pl. on approx. 3.85 ac. of land zoned R-1. Dranesville District. Tax Map 12-2 ((1)) 16 and 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. Carolyn See, 10619 Cavalcade Street, Great Falls, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit in order to include the existing church under the special permit, increase the number of students in the nursery school, and incorporate adjacent parcel 20 into the area that is the subject of the special permit. The applicant also requested modification to the development conditions to increase the hours of operation and change the permittee from the Forestville Methodist Preschool to the Great Falls United Methodist Church, and a special permit for error in building location to permit the existing church to remain 3.8 feet from the side lot line, and a shed to remain 6.2 feet from the side lot line. There were no physical changes proposed to the church building or to the seating capacity of the church. With the adoption of the development conditions, staff recommended approval of the application.

Ms. See, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant requested to increase the number of students from 50 to 99 daily, by adding an afternoon shift in addition to the morning shift. Ms. See said the hours of operation would be from 9:00 a.m. to 3:30 p.m., Monday through Friday. She said the applicant would implement the proposed development conditions as noted in the staff report.

Chairman DiGiulian called for speakers.

Richard Kane, 785 Stephanie Circle, came forward to speak in opposition of the applications. He expressed concerned that the amendment requested was being used to qualify a lot of other things. Mr. Kane said he was not opposed to the preschool, however he said it was like a "for profit" type operation and does compete with other "for profit" organizations in the community. He said the things he was really opposed to was the expansion of the church property, the introduction of the waiver for barrier requirements, the establishment of reduction for the parking spaces, and the establishment of an outdoor lighting requirement.

Ms. See addressed the speaker's concerns in her rebuttal stating that the preschool was a non profit service to the community. She said the church does not benefit financially from the preschool so they would not be able to use those funds for future building. Ms. See said that there was a demand for preschools in the community.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SPA 83-D-085 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREAT FALLS UNITED METHODIST CHURCH, SPA 83-D-085 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to amend SP 83-D-085 for nursery school to permit church and related facilities, increase in number of students, modification to development conditions, increase in land area, and reduction to minimum yard requirements based on error in building location to permit church to remain 3.8 ft.

from side lot line and accessory structure 6.2 ft. from side lot line. Located at 10100 Georgetown Pi. on approx. 3.85 ac. of land zoned R-1. Dranesville District. Tax Map 12-2 ((1)) 16 and 20. 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 30, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The request is reasonably modest.
- 3. The application does not impose any serious problems for the community as long as the applicant abides by the imposed conditions.
- 4. The applicant continues to provide needed services for the community.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only, Great Falls United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 10100 Georgetown Pike (3.85 acres) lots 16 and 20, and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by John D. Jarrett, Land Surveyor, Jarrett Surveys Inc. dated November 5, 1997, as revised through May 4, 1998, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. The existing row of cedar plantings along the northern lot line and on the eastern lot line of the play area shall be retained. Additional evergreen plantings shall be provided along the western lot line at the edge of the parking area to screen the playground and parking area from the residential properties to the west. The type and amount of plantings shall be determined at the time of site plan review by the Urban Forestry Branch of DPW & ES. The barrier requirement shall be waived.
- 6. The maximum number of seats in the main area of worship in the church shall not exceed 240.
- 7. The maximum daily enrollment for the nursery school shall be 99 students.
- 8. The maximum number of employees for the nursery school shall be 18.

9. The maximum hours of operation for the nursery school shall be limited to 8:30 a.m. to 4:00 p.m. Monday through Friday.
10. The number of children using the play area at any one time shall not exceed thirty five (35).
11. Prior to approval of a Non-Residential Use Permit for the Nursery school for 99 children, a reduction in parking shall be approved, as determined by the Zoning Permit Review Branch, DPZ, and the Department of Public Works and Environmental Services, for shared use of the parking lot by the church and nursery school based on respective hourly parking accumulation characteristics. If a parking reduction is not approved, the number of seats in the church and/or the number of children in the nursery school shall be reduced to a number that can be supported by the parking spaces provided on the site as determined by DPW & ES.
12. Two parking spaces in each parking lot located closest to the church building shall be reserved for pick-up and drop-off of students, and shall be clearly marked.
13. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
14. Any outdoor lighting of the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property.
 - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property,
 - The lights shall be controlled with an automatic shut-off device.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and 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 July 8, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 591, June 30, 1998, (Tape 1), Scheduled case of:

9:30 A.M. JOHN S. SORRELL, A 1998-SU-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected a 6.0 ft. tall fence in the front yard, is parking two commercial vehicles on the property, and has erected an accessory storage structure in the front yard of a lot which is less than 36,000 sq. ft., all in violation of Zoning Ordinance provisions. Located at 5419 Sasher Ln. on

Page 592 June 30, 1998, (Tape 1) JOHN S. SORRELL, A 1998-SU-006 and A 1998-SU-007,
continued from Page 591

approx. 0.5 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 8. (Concurrent with A 1998-SU-007).

9:30 A.M. JOHN S. SORRELL, A 1998-SU-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected two accessory storage structures and a 6.0 ft. tall fence on the property, all in violation of Zoning Ordinance provisions. Located at 12224 Braddock Rd. on approx. 0.49 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 5. (Concurrent with A 1998-SU-006).

Mr. Dively noted that the notices were not in order and that the subject applications would need to be deferred.

William Shoup, Deputy Zoning Administrator, said the appellant requested a deferral to August 25, 1998. He said the appellant's violation had been going on for some time and it was a severe violation. Mr. Shoup said the appellant indicated that they were going to try to clean up the property.

Mr. Pammel said Mr. Shoup was being kind in his description of the property. He stated he would categorize it much different than that. Mr. Pammel said he visited the site and said he had never seen anything as bad as that in a residential zone.

Mr. Dively asked if it was the intention of the appellant to clean up the property over the period of the deferral.

Mr. Armstrong, the appellant's agent, replied yes. He stated that the appellant had a very sick mother whom he is caring for and the highway department had its supplies on the appellant's front yard for about 5 years. Mr. Armstrong said the appellant had taken steps to clean up the property and that he had removed most of the vehicles. He said hopefully by the August 25, 1998, public hearing Mr. Pammel would feel differently about the property.

Mr. Dively moved to defer the application to August 25, 1998, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 592, June 30, 1998, (Tape 1), Scheduled case of:

9:30 A.M. DARRYL A. GRAY/PGW, INC. SALES & SERVICE, A 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 Mem. Hwy. on approx. 4.95 ac. of land zoned C-8, AN, HC and WS. Sully District. Tax Map 34-3 ((1)) 5. (DEF. FROM 12/5/95 FOR NOTICES; MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, AND 2/10/98).

Donna Pesto Roberson, Senior Assistant to the Zoning Administrator, Zoning Administration Division, stated the subject appeal had been filed on July 24, 1995, in response to a Notice of Violation issued for the operation of a U-Haul Truck and Trailer rental establishment. She said on November 17, 1997, the Board of Supervisors adopted an amendment to the Zoning Ordinance to allow such uses by special exception and they gave those U-Haul establishments, which were currently under violation, six months to submit a special exception request. Ms. Roberson said no special exception application had been submitted for the subject property and upon attempting to contact the appellant as to the status and intent, it was discovered that the business had closed operations and all related violations had been cleared from the site. She said staff had been unsuccessful in their attempts to contact the appellant and assumed a lack of interest in pursuing the appeal. Staff recommended that the Board of Zoning Appeals dismiss the appeal.

Mr. Dively moved to dismiss A 95-Y-050. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 593, June 30, 1998, (Tape 1), Action Item:

Approval of June 16, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 593, June 30, 1998, (Tape 1), Action Item:

Additional Time Request
Korean Central Presbyterian Church
SPA 83-P-057-3

Mr. Pammel moved to approve the request for additional time. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting. The new expiration date is July 6, 2000.

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Page 593, June 30, 1998, (Tape 1), Action Item:

Out of Turn Hearing Request
Trinity Assembly of God, SPA 96-Y-031

Mr. Dively moved to approve the Out of Turn Hearing Request for SPA 96-Y-031. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 593, June 30, 1998, (Tape 1), Action Item:

Out of Turn Hearing Request
St. George's United Methodist Church
SPA 76-S-049-2

Mr. Dively moved to deny the request for an Out of Turn Hearing. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 593, June 30, 1998, (Tape 1), Action Item:

Request for Intent to Defer
Bankers Trust Company of California
VC 98-P-027

Mr. Dively moved to approve the request for Intent to Defer. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting. The application was deferred to the morning of September 15, 1998.

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Out of Turn Hearing Request
Rogers C. Brooks, SP 98-M-030

Mr. Pammel moved to deny the request for Out of Turn Hearing. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from meeting.

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Approval of Revised Plats
Eric J. Candelori, VC 98-P-042

Mr. Dively moved to approve the revised plats for VC 98-P-042. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:37 a.m.

Minutes by: Regina Thorn

Approved on: October 20, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals


John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 7, 1998. The following Board Members were present: Chairman John DiGiulian, Robert Dively, Paul Hammack, Robert Kelley, Nancy Gibb, 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  July 7, 1998 (Tape 1), Scheduled Case of :


9:00 A.M. MCDONALD'S CORPORATION, VC 97-P-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from front lot line. Located at 7101 Leesburg Pi. on approx. 21,818 sq. ft. of land zoned C-8 and HC. Providence District. Tax Map 40-3 ((1)) 108A. (DEFERRED FROM 5/12/98).

Chairman DiGiulian stated that there was a request for deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the case was in connection with a special exception that had been denied by the Board of Supervisors. Based on the Board of Supervisors' decision, the applicant requested the case be deferred indefinitely.

Mr. Hammack moved to grant the request for indefinite deferral. Mr. Kelley seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained and Mr. Dively was not present for the vote.

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Page  July 7, 1998 (Tape 1), Scheduled Case of :

9:00 A.M. FRANK AND CHRISTINE HARTEL, VC 98-D-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 1815 Rupert Street on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((23)) 73.

Chairman DiGiulian called the case and stated that there was a request for withdrawal.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant requested withdrawal of the application in writing.

Mr. Kelley moved that the withdrawal request be accepted. 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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Page  July 7, 1998 (Tape 1), Scheduled Case of :

9:00 A.M. MELVIN D. SMITH, VC 98-V-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.2 ft. from side lot line. Located at 8048 Fairfax Rd. on approx. 8,800 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 548.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Melvin D. Smith, 8048 Fairfax Road, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of an addition 9.2 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2.8 feet was requested.

Mr. Smith stated that there is currently a deck in this location that is within 3 feet of the property line. The deck would be torn down and replaced with an addition 12 feet wide that would encroach into the minimum side yard requirement. Mr. Smith stated that after having discussed this with his builder, it was decided that the actual addition would be 9 feet wide which would not allow for good living space.

There was no one to speak in support or in opposition and Chairman closed the public hearing.

Mr. Hammack moved to approved VC 98-V-048, for the reasons stated in the Resolutions, subject to the Development Conditions as contained Appendix 1 of the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MELVIN D. SMITH, VC 98-V-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.2 ft. from side lot line. Located at 8048 Fairfax Rd. on approx. 8,800 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 548. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has satisfied the Board that conditions existed which supported the granting of a variance.
3. The lot is narrow and there is no feasible alternative location for the addition.
4. The proposed 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated March 23, 1998, 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 and Mr. Pammel 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 July 15, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JACK G. AND KATHLEEN D. AUBERT, VC 98-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.1 ft. from rear lot line, deck 6.5 ft. from side lot line and to permit a 7.1 ft. high fence to remain in the side yard. Located at 2615 S. West St. on approx. 9,296 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((16)) 17.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jack Aubert and Kathleen Aubert, 2615 West Street, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a second floor addition supported by columns and open on the first floor level, 16.1 feet from the rear lot line, and a second-story deck 6.5 feet from the side lot line. The applicant also requested an existing fence measuring 7.1 feet in height to remain in a side yard. The maximum height of a fence in a side yard is 7 feet; therefore, a variance of 0.1 foot was requested for the existing fence. A minimum 25 foot rear yard and a 10 foot side is required; therefore, variances of 8.9 feet and 3.5 feet were requested for the addition and deck.

Mr. Aubert, the applicant, stated that the variance was requested essentially for the second floor addition. He wanted to expand his kitchen but the addition would encroach into the rear setback. He stated that the property line in the rear is deep so there was no nearby structure. He stated that the deck could be smaller but that one corner would project into the side setback. Mr. Aubert also stated that the existing fence was 1 inch over the required height and thought it should not be necessary to cut off the fence.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-V-048, for the reasons stated in the Resolutions, subject to the Development Condition as contained in Appendix 1 of the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JACK G. AND KATHLEEN D. AUBERT, VC 98-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.1 ft. from rear lot line, deck 6.5 ft. from side lot line and to permit a 7.1 ft. high fence to remain in the side yard. Located at 2615 S. West St. on approx. 9,296 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((16)) 17. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the nine prescribed criteria for the granting of a variance.
3. The depth of the lot is narrow and the lot is irregularly shaped.
4. The location of the house is to the rear of the lot which does not allow any other area for the addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the second-story room addition, deck addition and fence shown on the plat prepared by Harold A. Logan Associates P.C., dated February 17, 1998, as revised through April 8, 1998, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CARRHOMES, INC., SP 98-L-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.3 ft. from rear lot line. Located at 6382 Alderman Dr. on approx. 5,425 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11))(3) 71.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, David Williams, 7535 Little River Turnpike, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as

outlined in the staff report. The applicant requested a special permit for error in building location to permit an addition of a deck with lattice privacy screening to remain 0.3 feet from the rear lot line. A minimum rear yard of 5 feet was established for this lot; therefore, a modification of 4.7 feet was requested pursuant to Zoning Ordinance Section 2-412.

Mr. Williams stated that the lot in the subdivision was 90 degrees from the adjacent property and was located in an east-west orientation as opposed to a north-south orientation. He said this placed the deck on this lot about 3/10 feet from the rear property line. Mr. Williams stated that there was a parcel with open space which was approximately 15 feet wide between this lot line and the subdivision boundary. He said the deck was constructed no closer to the subdivision boundary than any other decks in the area.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Dively stated that this was a hard case because the deck was very close to the boundary lines and as a rule of thumb, the Board did not allow them to go this close. He said because the deck is against the subdivision boundary lines and it did not appear to impinge on any other property line in the area he moved to approve SP 98-L-015 for the reasons in the Resolutions, subject to the Development Conditions contained in Appendix 1 of the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARRHOMES, INC., SP 98-L-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.3 ft. from rear lot line. Located at 6382 Alderman Dr. on approx. 5,425 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11))(3) 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 7, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an addition (deck with privacy lattice over four (4) feet in height above the deck floor) shown on the plat prepared by Dewberry & Davis, dated January 6, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 101, July 7, 1998 (Tape 1), Scheduled Case of :

9:00 A.M. VINCENT C. COSTANTINO, VC 98-S-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 6720 Passageway Pl. on approx. 8,615 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((26)) 210.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vincent Costantino, 6720 Passageway Place, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant requested a variance to permit construction of a room addition 15.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.0 feet was requested.

Mr. Costantino stated that he requested the variance because of the location of the house on the lot which is irregularly shaped. The house is further back on the lot than is normal, leaving the rear lot small. He stated that his house is on a cul-de-sac and limited the area of the lot and left no place for an addition. Mr. Costantino stated that because of the type of house and the location of the deck, the only area available for this addition was to the right rear of the property. This would make the addition too close to the rear lot line and to make it smaller would not be feasible and would restrict his use of the property. Mr. Costantino said the addition would not have an impact on the neighbors since the addition would be adjacent to park land which is to the rear, and a property owner to the north and also property owned by the Park Authority.

Mr. Costantino stated that there was a property owner on the south that would be adjoining but they would not be able to see the addition. The addition would be in harmony with others in the area.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-S-04, for the reasons in the Resolutions, subject to the Development Conditions as contained in Appendix 1 of the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VINCENT C. COSTANTINO, VC 98-S-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 6720 Passageway Pl. on approx. 8,615 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((26)) 210. 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 7, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The applicant has presented testimony before the Board which indicated that there is park land to the rear of the lot.
- 3. The rear yard is shallow and the lot is irregularly shaped.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition shown on the plat prepared by John E. Krobath, dated July 14, 1986, and revised by William L. Boyd, dated March 12, 1998, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, SP 98-Y-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 16.9 ft. from rear lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((19)) 21. (Concurrent with VC 98-Y-053).

9:00 A.M. KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, VC 98-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.5 ft. from rear lot line and 12.6 ft. from side lot line and deck 9.9 ft. from rear lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((19)) 21. (Concurrent with SP 98-Y-017).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenton R. Miller, Jr., and Diane G. Miller, 3201 History Drive, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicants requested a special permit for error in building location to permit a dwelling to remain 16.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a modification of 11.5 feet was requested. The applicants also requested variances to permit construction of

an addition to be located 14.5 feet from the rear lot line and a deck to be constructed 9.9 feet from the rear lot line. The original variance submitted and advertised requested a permit to construct an addition 12.6 feet from the side lot line. Since then, research determined that the lot was developed under the provisions of the cluster subdivision; therefore, a 12.6 foot addition met the Ordinance provisions and did not require a variance. The minimum rear yard is 25 feet as required; therefore, variances of 10.5 feet was requested for the addition and 3.1 feet was requested for the deck addition.

Ms. Miller said the special permit was requested to keep an existing addition and deck that was approved by the County and permitted in 1984 prior to them purchasing the property. She said they had made extensive remodeling of the addition and were requesting to keep the room. Ms. Miller said the deck was torn down and now they would like to put a kitchen there with the deck and stairs going to the ground level which would extend into the easement area. She said the home was built incorrectly and already exceeded the property line by three inches. There was no other area to expand the home because of its location on the property, and because there was a septic field in the front yard, and the driveway in the side yard which abutted the neighbor's property. Ms. Miller said the addition would not have a negative impact to the area and that it would be in keeping with the architectural standards in the area.

There was no one to speak in support or in opposition and Chairman DiGiulian closed the public hearing.

Ms. Gibb asked staff if the addition was for 10.5 feet from the rear lot line and the 3.1 feet was for the deck. Staff said it was.

Ms. Gibb made a motion to approve SP 98-Y-017 and VC 98-Y-053 for the reasons stated in the Resolutions, as contained in Appendix 1 of the staff report dated June 30, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, SP 98-Y-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 16.9 ft. from rear lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((19)) 21. (Concurrent with VC 98-Y-053). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1998; 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;

Page 005 July 7, 1998 (Tape 1), KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, SP 98-Y-017 and VC 98-Y-053, continued from Page 004

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a dwelling shown on the plat prepared by R.C. Fields, dated April 10, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1998. 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

KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, VC 98-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.5 ft. from rear lot line and 12.6 ft. from side lot line (it was determined that variance for MINIMUM side yard was not required) and deck 9.9 ft. from rear lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((19)) 21. (Concurrent with SP 98-Y-017). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 15, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants have presented testimony that the application is in compliance with the nine standards for the granting of a variance.
- 3. The lot is irregularly shaped and the location of the house does not allow for the addition to be built in any other location.
- 4. A septic field is located in the front yard.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition and deck (balcony) shown on the plat prepared by R.C. Fields, dated April 10, 1998, 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 607 July 7, 1998 (Tape 1), KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, SP 98-Y-017 and VC 98-Y-053, continued from Page 606

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 607 July 7, 1998 (Tape 1), Scheduled Case of :

9:00 A.M. BLACK OAK PROPERTIES INC., SP 98-B-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.08 ft. from side lot line such that side yards total 22.78 ft. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-3 ((6)) 36A.

Chairman DiGiulian called the case and stated that he had a note which indicated that the application had been administratively withdrawn. Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the application had been withdrawn. She stated that subsequent to the acceptance of the application, the special permit plat was revised by the applicant and it was determined that the error in building location was less than 10 percent; therefore, administrative approval of the variance was granted on June 25, 1998. Ms. Langdon said that even though the application was withdrawn, it was left on the agenda because it had already advertised.

The applicant, Dennis Burke, 5329 Black Oak Drive, Fairfax, Virginia, confirmed that there was no objection to the withdrawal.

Because the application was administratively withdrawn, no vote was necessary.

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Page 607 July 7, 1998 (Tape 1), Scheduled Case of :

9:30 A.M. GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP, JINDO & YOUNGHEE KIM, JOHN & RENEE THOBURN, A 1997-HM-040 Appl. under Sect(s). 18- 301 of the Zoning Ordinance. Determination that the appellants have established uses authorized by SPA 91-C-070-2 without a Non- Residential Use Permit (Non-RUP), and that the uses are not in compliance with Special Permit Conditions 7, 9, 16 and 20, all in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.29 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, and 5. (RESCHEDULED FROM 3/10/98).

Chairman DiGiulian called the case and stated that the Board issued an intent to defer the case until August 25, 1998.

Mr. Pammel moved to approve the deferral date. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 608 July 7, 1998 (Tape 1), Scheduled Case of :

9:30 A.M. JAMES L. BLEVINS, A 1997-SU-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has expanded the nonconforming use of a motor freight terminal, added structures to the property without approval of Building Permits, is to maintaining a lumber yard/building material yard and a storage yard, is storing fireworks and is operating a retail sales establishment on the premises, all in violation of Zoning Ordinance provisions. Located at 15900 Lee Hwy. on approx. 12.4857 ac. of land zoned R-C, WS. Sully District. Tax Map 64-1 ((1)) 18. (MOVED FROM 11/11/97, RESCHEDULED FROM 1/27/98 and DEFERRED FROM 4/7/98.)

Chairman DiGiulian called the case and stated that the Board issued an intent to defer the case until November 10, 1998.

Mr. Pammel moved to approve the deferral date. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 608 July 7, 1998 (Tape 1), Scheduled Case of :

9:30 A.M. BLACK OAK PROPERTIES, INC./DENNIS E. BURKE, A 96-B-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that a carport on the appellant's property had been enclosed without approval of a Building Permit and in noncompliance with the minimum side yard requirements, and that the appellant is operating a business office without a home occupation permit, all in violation of Zoning Ordinance provisions. Located at 5329 Black Oak Dr. on approx. 11,716 sq. ft. of land zoned R-2. Braddock District. Tax Map 68-3 ((6)) 36A. (DEF. FROM 1/21/97 FOR NOTICES. CONTINUED FROM 3/11/97 TO ALLOW APPLICANT TO FILE A SPECIAL PERMIT OR VARIANCE. DEF. FROM 9/16/97, 10/14/97 AND 2/24/98).

Chairman DiGiulian called the case and stated that there was a request for withdrawal.

Mr. Dively moved to approve the withdrawal request. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 608 July 7, 1998 (Tape 1), After Agenda Item:

Approval of November 25, 1997, Minutes; December 23, 1997, Minutes; January 20, 1998, Minutes; January 27, 1998, Minutes; February 24, 1998, Minutes; March 24, 1998, Minutes; and April 14, 1998, Minutes

Mr. Pammel moved to approve the above stated Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 608 July 7, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-P-076, Andre and Christina Barlow

Mr. Dively made a motion to deny the Out-of-Turn hearing request. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 608 July 7, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for SP 98-M-032, George and Adele Marshall

Page 609 July 7, 1998 (Tape 1), After Agenda Item, continued from Page 608

Mr. Ribble asked staff when was the application submitted. Staff replied saying the application was accepted on June 22, 1998, the same day the plat was received.

Mr. Dively made a motion to deny the Out-of-Turn hearing request. Mr. Ribble and Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 609 July 7, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for SPA 82-V-093-5, Belle Haven Country Club

Mr. Kelley said he was a member of Belle Haven and that he could not support the motion. He made a motion to deny the Out-of-Turn hearing request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 609 July 7, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for SPA 95-M-036-2, Mustafa Center

Mr. Dively made a motion to deny the Out-of-Turn hearing request. Mr. Pammel seconded the motion which carried by a vote 7-0.

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Page 609 July 7, 1998 (Tape 1), After Agenda Item:

Request for Intent to Defer for Woody's Golf Range, SPA 79-D-176-3

Mr. Dively made a motion to defer the case to August 25, 1998.

Mr. Pammel said he could not approve August 25, 1998, because of the overwhelming schedule for that day, and SPA 79-D-176-2 had opposition. He indicated that another date in September would be appropriate.

Mr. Dively made a substitute motion to defer the case to October 6, 1998. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 609 July 7, 1998 (Tape 1), After Agenda Item:

Additional Time to Commence Construction Approved by Variance VC 95-V-109

Mr. Pammel stated that the application was in conformance with the Comprehensive Plan and moved to approve the request for additional time for VC 95-V-109 to June 13, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page ~~60~~ July 7, 1998 (Tape 1), After Agenda Item: ~~6-0-1~~

Approval of June 30, 1998, Resolutions

Mr. Dively made a motion to approve the June 30, 1998, Resolutions. The person seconding the motion was not distinguishable. The vote was 6-0-1. Mr. Hammack abstained because he was not present at the June 30, 1998, meeting.

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Page ~~60~~ July 7, 1998 (Tape 1), After Agenda Item

Proposed Zoning Ordinance Amendments

Susan Langdon, Chief, Special Permit and Variance Branch, brought to the attention of the Board, the proposed Zoning Ordinance Amendments that were included in the previous week's package. She indicated that a discussion of the amendments would be placed on the July 14, 1998, After Agenda.

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As there was no other business to come before the Board, the meeting was adjourned at 9:46 a.m.

Minutes by: Ann-Marie Wellington

Approved on: October 13, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 14, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 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 ~~101~~ July 14, 1998, (Tape 1), Scheduled case of: ~~6009~~

9:00 A.M. MICHAEL PALLONE AND DAVID P. FOSTER, VC 98-S-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one outlot into two lots and an outlot, proposed lot 1 having a lot width of 20.0 ft. and proposed lot 2 having a lot width of 22.0 ft. Located at 6100 Block of Shiplett Blvd. on approx. 2.10 ac. of land zoned R-3. Springfield District. Tax Map 78-4 ((13)) C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Badreddin Plaseied, Agent, 9713 Counsellor Drive, Vienna, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one outlot into two lots and an outlot, with proposed Lot 1 having a lot width of 20 feet, and proposed Lot 2 having a lot width of 22 feet. A lot width of 80 feet is required by the Zoning Ordinance. In staff's evaluation, the proposed subdivision did not meet the nine required standards for approval of a variance, specifically Standards 7 and 9. Staff believed that the development of two lots from an outlot with steep slopes, the potential for hydric soils, and extensive clearing of wooded areas, would result in disturbance to nearby environmentally sensitive areas and to surrounding single family dwellings. In addition, the creation of two pipestem lots from the outlot very close to existing dwellings on surrounding lots would cause many of the structures on those lots to be located in a required front yard, and would render those structures non-conforming. This might affect the future use of the properties based on restrictions in the front yard.

Mr. Plaseied, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants wanted to subdivide the subject parcel into 2 lots, but due to insufficient lot width they were seeking approval of the variance. He said the parcel was part of the original Bent Tree subdivision approved in 1969. Mr. Plaseied said although it was classified as Outlot C it was not part of the density calculation or open space requirement of the subdivision. He stated that there were no proffers or development conditions committed for the site or the subdivision. Mr. Plaseied said the parcel would have been subdivided under the current zoning into 5-6 lots if it had a 50 foot right-of-way access to Shiplett Boulevard. He said however, due to the limited road frontage, the owners were requesting 2 lots with 20 feet and 22 feet of frontage, respectively. Mr. Plaseied stated that the other outlots in the same subdivision were eventually subdivided as a part of the PDH-2 zoning case in 1986. He said the proposed subdivision was within the use and density recommendation of the Comprehensive Plan. Mr. Plaseied said if approved, the applicant would develop the property in accordance with all the County requirements and cooperate with the adjacent property owners for a smooth and comfortable development process. He said it was the applicants' full intention to preserve the integrity of the adjacent properties and the neighborhood. He stated that the site was not located in the floodplain. Mr. Plaseied stated that the subject site, in its present shape, would qualify as a single residential recorded lot.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in opposition of the application. Len Wilkinson, 6116 Rockwell Court; Jeff Ellis, 6114 Rockwell Court; Steve Casey, 6105 Virgo Court; Vivana Oyola, 6111 Virgo Court; Lisa Wittig, 6003 Harvester Court; John W. Peterson; Dennis Trizna, 6103 Virgo Court; Barbara Coffin, 6101 Virgo Court; Jill Wilkinson, 6116 Rockwell Court; Inanloo Farhad, 6129 Shiplett Boulevard; Lloyd Johnson, 10223 Raider Lane; Stephen Kubiak, 6064 Guild Hall Court; Richard Gallant, 6100 Virgo Court; John and Beverly Buczacki, 6131 Shiplett Boulevard; Jim McIntyre, White Oaks Civic Association, 6142 Shiplett Boulevard; Carol Willett, 6106 Rockwell Court; and Master Robert Jones, 6114 Rockwell

Court. There were others present to oppose the application that did not come forward to speak. They were asked to stand to represent their presence.

The speakers expressed concerns relating to the property being too narrow to subdivide, there being no real hardship on behalf of the applicants, that the outlot was restricted from building, that is was a detriment to surrounding neighbors, the request did not comply with the required standards, was not acquired in good faith, presented environmental issues, required extensive clearing and grading, and that the applicants' hardship was self imposed, changing the character of the neighborhood, would present safety hazards relating to sight distance, would cause other properties to become non-conforming, and that the purchase price of the lot was \$10.

Ms. Willett submitted a sample of clay found on the subject property which she stated represented a safety and environmental hazard.

Master Jones felt the land was unbuildable due to the number of creeks in the area and the fact that he and a friend got stuck for an hour in the clay on the subject property. Master Jones stated if the applicants were to build on the subject property, he felt the houses would sink, as he did.

Mr. Kelley asked what was the relevance of the cost of the subject property, that this was a land use issue. Mr. McIntyre responded that the issue was of hardship.

Mr. Dively said the relevance issue was more appropriate under the "good faith" section and reasonable expectation of what you put the use of the land to.

Mr. Plaseied gave rebuttal, stating that soil studies and sight distance analysis would be required at subdivision plat stage. He said neighbors would have their fences and gardens fenced off. Mr. Plaseied said anyone in the community could have purchased the property to stop development.

Mr. Hammack asked staff what happened between 1972-1998 that allowed the subject property to become a buildable lot. Ms. Schilling replied that the lot was still classified as an outlot and no building permit could be issued. She said it was considered an outlot because it didn't meet the minimum lot width requirements in 1972 and still did not according to the current Zoning Ordinance. She said the applicants would need a subdivision variance in order to create any building site on the property. Ms. Schilling stated that there had been no change in buildability since 1972.

Mr. Hammack asked if the lot was included in the calculations of the density in the subdivision. Ms. Schilling replied that there were three outlots that were retained from the subdivision and the subject lot was not included in any density or open space calculations.

Mr. Hammack asked if the lot was part of the Bent Tree subdivision. Ms. Schilling replied affirmatively but stated the lot was not part of the density calculations or the open space, so it was not part of the cluster subdivision per se.

Chairman DiGiulian asked if the other outlots were developed subject to rezoning. Ms. Schilling stated that they were incorporated in an adjacent rezoning, and they were currently a part of the open space for that rezoning.

Mr. Pammel asked what was the final density of the Bent Tree subdivision. Ms. Schilling replied it was about 3 dwelling units per acre.

Mr. Hammack moved to deny VC 98-S-044 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

Page **613** July 14, 1998 (Tape 1), MICHAEL PALLONE AND DAVID P. FOSTER, VC 98-S-044,
continued from Page **613**

MICHAEL PALLONE AND DAVID P. FOSTER, VC 98-S-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one outlot into two lots and an outlot, proposed lot 1 having a lot width of 20.0 ft. and proposed lot 2 having a lot width of 22.0 ft. Located at 6100 Block of Shiplett Blvd. on approx. 2.10 ac. of land zoned R-3. Springfield District. Tax Map 78-4 ((13)) C. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance application has an impact on adjacent property owners. For the majority of the property owners it has an environmental impact and is not in harmony with the neighborhood.
3. Where the variance would be located imposes new legal requirements on adjoining properties.
4. The variance would not be in harmony with the intended spirit and purpose of the Ordinance.
5. The lot was originally recorded as a non-buildable lot.
6. The purchaser was on notice that it was a non-buildable lot and created a self inflicted 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. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998.

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Page _____, July 14, 1998, (Tape 1), Scheduled case of:

9:00 A.M. EDWARD A. AND SYLVIA J. STOROZUK, VC 98-Y-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear lot line and 4.0 ft. from side lot line. Located at 15012 Ulderich Dr. on approx. 11,624 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2))(9) 7A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Storozuk, 15012 Ulderich Drive, Centreville, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage 2.0 feet from the rear lot line and 4.0 feet from the side lot line. A minimum rear and side yard of 15 feet and 8 feet respectively are required; therefore, variances of 13 feet and 4 feet were requested.

Mr. Storozuk presented the variance requests as outlined in the statement of justification submitted with the application. He said the addition would be similar to the garage next door and that the neighbors had no objections to the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he was concerned about the proximity of the addition to the rear property line and the ability to maintain the addition. He asked Mr. Storozuk would he be agreeable to moving the addition forward to allow for a distance of 5 feet. Mr. Storozuk replied that he would have to cut down trees and was trying to avoid having to do that.

Mr. Pammel moved to deny VC 98-Y-058 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD A. AND SYLVIA J. STOROZUK, VC 98-Y-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear lot line and 4.0 ft. from side lot line. Located at 15012 Ulderich Dr. on approx. 11,624 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2))(9) 7A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 1998; and

WHEREAS, the Board has made the following findings of fact:

Page 615 July 14, 1998 (Tape 1), EDWARD A. AND SYLVIA J. STOROZUK, VC 98-Y-058, continued from Page

1. The applicants are the owners of the land.
2. The proposed structure was too substantial and too much for the rear yard.

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 and Mr. Hammack seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Kelley, and Ms. Gibb voted nay. Mr. Pammel moved to waive the 12-month limitation for refiling. Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998.

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Page 615 July 14, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BANKERS TRUST COMPANY OF CALIFORNIA, N.A. AS TRUSTEE FOR RESOLUTION TRUST CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES SERIES 1993-4P, VC 98-P-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 9.6 ft. from side lot line. Located at 3712 and 3716 Prosperity Ave. on approx. 1.93 ac. of land zoned R-1. Providence District. Tax Map 59-1 ((5)) 12A; 59-3 ((6))13-A. (MOVED FROM 6/2/98).

Page 014 July 14, 1998 (Tape 1), BANKERS TRUST COMPANY OF CALIFORNIA, N.A. AS TRUSTEE FOR RESOLUTION TRUST CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES SERIES 1993-4P, VC 98-P-027, continued from Page 013

Chairman DiGiulian noted that the Board issued an Intent to Defer to September 15, 1998, at 9:00 a.m. Mr. Pammel so moved. The motion was seconded by Mr. Dively and carried by a vote of 7-0.

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Page 015, July 14, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JOAN LESLIE, VC 98-P-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 21.5 ft. from front lot line. Located at 7532 Oak Glen Ct. on approx. 14,192 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((19))(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. Joan Leslie, 7532 Oak Glen Court, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport 21.5 feet from the front lot line. A minimum front yard of 30 feet is required in the R-4 District; therefore, a variance of 8.5 feet was requested.

Ms. Leslie presented the variance request as outlined in the statement of justification submitted with the application. Ms. Leslie stated she was requesting a carport so she would have a place to store her vehicle during inclement weather. She said the carport would enhance the appearance of the house.

Mr. Ribble asked if this was the only place the carport could be located. Ms. Leslie replied yes.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-P-045 for the reasons noted in the Resolution

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOAN LESLIE, VC 98-P-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 21.5 ft. from front lot line. Located at 7532 Oak Glen Ct. on approx. 14,192 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((19))(4) 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 14, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The location of the house on the lot is unusual.
4. The carport can only be placed in the proposed location because of the converging lot lines toward the front of the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a carport shown on the plat prepared by Alexandria Surveys, Inc., dated February 17, 1998, 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. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PAUL S. AND KATHLEEN M. PASTOR, VC 98-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.4 ft. from side lot line. Located at 15293 Surrey House Wy. on approx. 13,803 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5))(4) 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. Paul and Kathleen Pastor, 15293 Surrey House Way, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a deck 1.4 feet from the side lot line originally, but had subsequently revised their request to 2.5 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 17.5 was requested.

Mr. Pastor presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was pie shaped with converging lot lines. He stated that he had doors in the house that opened to space and nothing else. Mr. Pastor said the addition would be architecturally compatible with the existing dwelling. He submitted a petition signed by the neighbors in support of the application.

Mr. Hammack noted a letter of opposition from the next door neighbor.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 98-Y-046 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 7, 1998.

Mr. Hammack noted that he was sympathetic to the neighbor next door whose patio and rear of the house would be below the subject deck level, and that the applicant could pull the deck in to allow the neighbors more privacy. He said he would feel more comfortable with a lesser variance.

Mr. Pammel said he echoed Mr. Hammack's concerns and felt a lesser variance would be more appropriate.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL S. AND KATHLEEN M. PASTOR, VC 98-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.4 ft. from side lot line **(2.5 FEET WAS APPROVED)**. Located at 15293 Surrey House Wy. on approx. 13,803 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5))(4) 40. 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 14, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The lot is exceptionally narrow, shallow, and very sharply pie shaped in the rear.
3. 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck addition shown on the plat prepared by Jeffrey S. Smith, dated April 3, 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 deck addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted nay. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. ST. JOHN'S EPISCOPAL CHURCH & ST. JOHN'S EPISCOPAL CHURCH OF CENTREVILLE, VA, CHARITABLE TRUST, SPA 85-S-053-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-053 for church and related facilities to permit increase in land area. Located at 5649 Mount Gilead Rd. and 5619 Wharton Ln. on approx. 4.42 ac. of land zoned R-1, WS, HC, SC, and HD. Sully District. Tax Map 54-4 ((1)) 24 pt., and 25A.

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 Pike, 5649 Mt. Gilead Road, Centreville, Virginia, replied that it was.

Mr. Pammel asked was the application just about adding land area. Juan Bernal, Staff Coordinator, replied yes.

Mr. Pammel stated that the Board had never done that before. Chairman DiGiulian stated that the Board had heard such applications in the past.

Chairman DiGiulian noted a memo that stated that the County thinks that they do have to bring such applications before the Board and the applicants agreed.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were other uses that the applicant wanted for the land. She stated there was no construction proposed but some recreational uses and outdoor church services were being proposed.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to allow an increase in land area with no development taking place at this time. Staff concluded that the subject application is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; and therefore, recommended approval. The applicant submitted revised development conditions outlining changes to Conditions 8 and 9 which were distributed to the Board. Staff reviewed those changes and supported the applicant's proposed changes.

Ms. Pike, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She stated that there was no development planned at this time. Ms. Pike stated that the purpose of the application was to bring the church up to standards so that future generations could enjoy their beautiful chapel. She said it was important to the church to maintain the integrity of their quiet neighborhood. Ms. Pike requested revisions to the wording of Conditions 8 and 9. She said the request for a split rail fence was to protect the integrity and beauty of the land. She stated that the church understood the need to restrict outdoor noise in a residential area and the speakers the church had used in the past for outdoor church services, were very small and only taken out for that day and faced inward towards the church and did not reach more that 55 decibels.

Mr. Kelley said he didn't understand the reasons for a split rail fence since it did not block any noise.

Mr. Hammack said split rail was common in the battlefield area of Centreville and Manassas. He said he wasn't sure why they had to have a fence at all.

Mr. Bernal stated that the fence was requested for safety when the church had children at play.

Discussion pursued between staff and the Board members pertaining to the use of loud speakers.

Chairman DiGiulian called for speakers.

William Cole, Trustee, 10600 Sandy Run Trail, came forward to speak in support of the application. He said the trust entered into a contract with Mr. and Mrs. Hansberger to purchase 1.334 acres of their unimproved land at their home site of 1519 Wharton Road. He said this property was contiguous to the church property and that no permanent structures would be erected upon the parcel being purchased until it was paid for. He stated that the Hansbergers requested the split rail fence.

Page 621 July 14, 1998 (Tape 1), ST. JOHN'S EPISCOPAL CHURCH & ST. JOHN'S EPISCOPAL CHURCH OF CENTREVILLE, VA, CHARITABLE TRUST, SPA 85-S-053-02, continued from Page 620

Lee Johnson, Senior Warden, representing the church's vestry, came forward to support the application stating the property would be used for the community.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SPA 85-S-053 for the reasons noted in the Resolution subject to the Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. JOHN'S EPISCOPAL CHURCH & ST. JOHN'S EPISCOPAL CHURCH OF CENTREVILLE, VA, CHARITABLE TRUST, SPA 85-S-053-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-053 for church and related facilities to permit increase in land area. Located at 5649 Mount Gilead Rd. and 5619 Wharton Ln. on approx. 4.42 ac. of land zoned R-1, WS, HC, SC, and HD. Sully District. Tax Map 54-4 ((1)) 24 pt., and 25A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- *1. This approval is granted to the applicant only, St. John's Episcopal Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 5649 Mount Gilead Road, consisting of 4.42 acres, and is not transferable to other land.
- *2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Reid M. Dudley of Runyon, Dudley, Associates, dated March 24, 1998, and approved with this application, as qualified by these development conditions.
- *3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- *4. This special permit is subject to the provisions of Article 17, Site Plans as determined by the Department of Public Works and Environmental Services (DPW & ES). Any plan submitted pursuant to this special permit shall be in conformance to the approved Special Permit Amendment plat and these development conditions.
- *5. The maximum seating capacity shall be 450 seats, 117 parking spaces shall be provided. All

parking shall be on site and in the parking areas designated on the Special Permit plat.

*6. No Transitional Screening/Barrier shall be required along the southwest lot line (Mt. Gilead) because adjacent property and property immediately across Mt. Gilead have been rezoned PDC and are planned for a mixed use development.

No Transitional Screening/Barrier shall be required along the northwest lot line (Wharton Lane) because there are no building or parking additions in this area, and because any additional screening would encroach upon existing marked graves.

The twelve (12) feet of Transitional Screening shall be provided along the northeast lot line and southeast lot line. The twelve (12) foot transitional screening shall be heavily planted and continue to meet the planting requirements of Article 13 as shown on the approved special permit plat. The barrier requirements shall be modified so as to allow the continuation of the zig zag split rail fence in lieu of Barrier D, E, or F. The existing vegetation may be used to partially satisfy this requirement if the vegetation is maintained and/or supplemented to meet the twelve (12) foot screening to the satisfaction of the County Urban Forester.

*7. The driveway connecting Wharton Lane with the eastern parking area shall be marked with signage indicating one-way traffic.

*8. Any proposed new lighting of the parking areas shall be in accordance with the following:

The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall be focused directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

*9. Best Management Practices (BMPs) shall be provided in accordance with the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance and the Public Facilities Manual.

10. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines.

- Speed limits shall be kept low, generally 10 mph or less.
- The areas shall be maintained routinely with stone and evenly spread to a depth adequate enough to prevent wear-through or bare subsoil exposure.
- Runoff shall be channeled away from and around driveway and parking areas.

11. The Floor Area Ratio (FAR) shall not exceed 0.047.

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, with out notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively and Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not

Page 603 July 14, 1998 (Tape 1), ST. JOHN'S EPISCOPAL CHURCH & ST. JOHN'S EPISCOPAL CHURCH OF CENTREVILLE, VA, CHARITABLE TRUST, SPA 85-S-053-02, continued from Page 602

present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 603 July 14, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SLEEPY HOLLOW BATH & RACQUET CLUB, INC., SPA 77-M-094 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 77-M-094 for community swimming pool and tennis courts to permit building additions, site modifications, and modification to development conditions. Located at 3516 Sleepy Hollow Rd. on approx. 7.77 ac. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 55. (Concurrent with SE 93-M-003).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fred Taylor, Attorney, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Denise James of the Rezoning and Special Exception Branch. The application proposed changes to include construction of a second story addition to the clubhouse; a new entry to the existing clubhouse, a wood arbor to the rear of the clubhouse, a new pool pump-house building, a new emergency access gate, a wood arbor over the judges stand, installation of new fencing, a wood walkway along the northern edge of the tennis courts, a sand volleyball court, a concrete half-basketball court, an open sided picnic shelter, and changes in the hours of operation from an opening time of 8 a.m. to 7 a.m. Staff believed that the majority of the proposed additions and renovations may be implemented without overly impacting adjacent properties. The land use and environmental issues raised in the staff report focused on the intensive development of multiple active recreation uses. The subject application is concurrent with SE 93-M-003 for fill in the floodplain and was approved by the Board of Supervisors on July 13, 1998. Staff recommended approval of the application with the implementation of the Revised Development Conditions dated June 19, 1998. A revised plat was submitted dated May 27, 1998.

Mr. Taylor, the applicant's agent, presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Taylor noted the revised development conditions dated June 10th, and indicated that those conditions were a result of the site visit by Ms. James. He said the club was trying to provide for community and economical survival effort to keep viable and attract new members. He said the facilities were 40 years old. Mr. Taylor stated the club continued to be a good neighbor and all the issues raised by the neighbors had been addressed.

Mr. Hammack expressed concern with the multipurpose court.

Mr. Dively asked Mr. Taylor if he was aware of the letters that were submitted to the Board. Mr. Taylor replied yes.

Chairman DiGiulian called for speakers.

Judith Strothers, 6713 Valley Brook Drive, came forward to speak in opposition. She said her comments were based on the May 15, 1998, staff report. Ms. Strothers said she was not aware of the changes to the conditions until she appeared before the Board. Ms. Strothers said she was glad to hear about the changes as reflected in the June 10th revised conditions because she was concerned about the increased impact on the neighborhood.

Mr. Taylor gave rebuttal stating that the speaker's concern were directed towards the previous conditions and he felt her issues were addressed through the revised conditions.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 77-M-094 for the reasons noted in the Resolution subject to the Revised

Development Conditions dated June 10, 1998.

Mr. Hammack said the multipurpose courts generate a lot of noise and would like to see it deleted from the application.

Mr. Pammel said he felt that the Board needed to get a uniformed policy in the County pertaining to loudspeakers in a community where there is impact from a club such as this.

**Mr. Dively requested that the staff prepare a list of what had been done pertaining to the issue of loudspeakers at pools over the last couple of years, so the Board could set up a uniformed standard.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SLEEPY HOLLOW BATH & RACQUET CLUB, INC., SPA 77-M-094 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 77-M-094 for community swimming pool and tennis courts to permit building additions, site modifications, and modification to development conditions. Located at 3516 Sleepy Hollow Rd. on approx. 7.77 ac. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 55. (Concurrent with SE 93-M-003). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 1998; 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 7.7 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(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. *This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, (3516 Sleepy Hollow Road, 7.77 acres of land) 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 entitled "Special Exception Plan/Special Permit Plat, Sleepy Hollow Bath and Racquet Club, Incorporated" and prepared by Walter L. Phillips, Incorporated which is dated July 22, 1997, as revised through May 26, 1998, and these conditions. These development conditions incorporate and supersede all previous development conditions.
- 3. *A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments

of the County of Fairfax during the hours of operation of the permitted use.

- 4. *This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW & ES). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. *Hours of operation for all uses of the facility shall be limited to between 8:00 am and 9:00 pm except as specified below. After hours parties will require special permission of the Zoning Administrator and such parties shall be limited to six (6) per year. Use of the proposed sand volleyball court, multi-purpose court and picnic shelter shall be limited to between 10:00 and dusk, Monday through Saturday and 12:00 noon and dusk on Sundays.
- 6. *All noise from loudspeakers shall be confined to the site; use of loudspeakers shall be permitted primarily for swim meets, pool safety and normal routine use. Piped music over the loudspeaker shall not be permitted. All uses shall be subject to the Zoning Ordinance performance standards for noise and glare.
- 7. The maximum number of memberships shall be 475; the maximum number of employees on site at any one time shall be 10.
- 8. There shall be 122 parking spaces provided as shown on the SE/SPA plat. All parking shall be on site.
- 9. In order to provide noise mitigation, supplemental screening shall be provided between the tennis courts and northern lot line as indicated on the SE/SPA plat or as may otherwise be determined appropriate and feasible by DPW & ES/Urban Forester. Required screening and barriers shall be modified in favor of the existing vegetation and fencing provided on the SE/SPA plat along the eastern and western lot lines.
- 10. Construction of the sand volleyball court may be permitted provided that the existing trees are not removed or disturbed such that the long term survival of the trees is jeopardized as may be determined by the Urban Forester.
- 11. Use of the sand volleyball court and adjacent picnic shelter shall not be permitted until such time as the additional screening along the northern lot line is fully installed and implemented to the satisfaction of DPW & ES/Urban Forester. There shall be no lighting, loudspeakers or other sound equipment utilized in connection with the proposed picnic shelter, sand volleyball or multi-purpose court.
- 12. This use shall be under the control and direction of a board of managers composed, at least in part, of the residents of the area intended to be served by the facility. This use shall be operated on a non-profit-making basis and the owner of the facility shall be a nonprofit organization where the membership thereto is limited to residents of a nearby residential area.
- 13. This special permit amendment shall be contingent upon the Board of Supervisors approval of a Special Exception for Uses in a Floodplain and subject to all requirements of Chapter 118 of the County Code, Chesapeake Bay Preservation Ordinance. Failure to obtain approval of the SE or any exceptions or conditions required by the CBPO will render this SPA null and void.
- 14. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals are neutralized prior to discharge by using the following

guidelines for all pool discharge materials:

- All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.
- If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged, and filtered prior to discharge.
- Pool water shall be discharged slowly at a constant rate to prevent adverse impacts to the sanitary sewer drain and/or receiving streams.

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. 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. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 620 July 14, 1998, (Tape 1), Scheduled case of:

9:30 A.M. EBRAHIM A. BABAZADEH, A 1997-SU-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a heavy equipment and specialized vehicle sales, rental and service establishment (U-Haul rental vehicles) in violation of Zoning Ordinance provisions. Located at 13928 Lee Hwy. on approx. 54,924 sq. ft. of land zoned C-8, HC, SC, and WS. Sully District. Tax Map 54-4 ((1)) 57. (RESCHEDULED FROM 7/8/97. MOVED FROM 10/28/97, 2/10/98 AND 6/30/98).

Jayne Collins, Zoning Administration Division, said the appellant was cited for operating a business involving the rental of U-Haul trucks in the C-8 District. When the Notice of Violation was issued, such use was considered a heavy equipment and specialized vehicle sales, rental, and service establishment which was permitted only in the I-5 and I-6 Districts. In 1995, a number of businesses were cited for operating truck rental establishments in commercial districts. In response to a BZA motion on November 17, 1997, the Board of Supervisors adopted Zoning Ordinance Amendment 97-304 which amended the Ordinance to permit truck rental establishments to be located by-right in the I-5 and I-6 Districts and by special exception in certain commercial districts including the C-8 District, provided they were ancillary to a principal use on the site and were established in accordance with the additional standards for truck rental establishments. The amendment also redefined heavy equipment and specialized vehicle sale, rental and ancillary service establishment and vehicle sale, rental, and ancillary service establishment to exclude trucks and equipment rented for the purpose of moving personal and household belongings from those definitions. The

amendment also added a new definition of truck rental establishment.

While the appellant wasn't a part of the initial set of Notices issued in 1995, a complaint was received in March 1997, alleging that the appellant was operating a U-Haul franchise from his business American Antiques on Lee Highway in Centreville. U-Haul removed the rental trucks and the equipment in early April, 1997 and there currently was no violation on the subject property. After the Ordinance was amended in November, 1997, each of the U-Haul appellants were given 6 months to pursue special exception approval if they so desired. The appellant indicated his intent to pursue special exception approval but then decided he would rather deal with the issue through the appeal process. Ms. Collins indicated that if the appellant wished to re-establish a U-Haul truck rental business at the subject location in conjunction with American Antiques, he should attempt to do that through the Special Exception process. Given the circumstances and the appellant's insistence to settle this issue through the appeal process without applying for a special exception, staff recommended that the BZA take action to uphold the original determination set forth in the Notice.

Mr. Dively stated that as a factual matter the issue was moot. Ms. Collins replied that there was currently no violation on the site. She said at the time the Notice was issued, there was a violation. Mr. Dively asked why was the Board hearing the subject application. Ms. Collins said that it was the appellant's insistence to deal with the matter through the appeal process rather than apply for a special exception. Mr. Dively said if it was moot than there was no issue in controversy.

Chairman DiGiulian stated that the applicant had the right to have his appeal heard because he had paid his money.

Mr. Babazadeh said the purpose of the appeal was that he was being discriminated against because the other 32 U-Haul dealers that were operating in Fairfax County had been allowed to do business until the amendment went through. He said he was the only one they told could not operate until the decision. He said the purpose of the BZA was to reinstate his car rental business until a special exception was approved. Mr. Babazadeh said Mr. Shoup had informed him that even though he applied for a special exception it would be rejected, he said he did not know the basis of Mr. Shoup's statement. Mr. Babazadeh said when the Board of Supervisors (BOS) approved the amendment they pinpointed those U-Haul establishments that could operate until special exception approval, but he was not allowed to operate. He said he wanted to know why he could not have a car rental establishment since it was allowed in the C-8 District.

Ms. Collins replied that at the time the Notice was issued, staff had been working for 18 months with the U-Haul officials on the amendment and at the time the Notice was issued, staff became concerned that U-Haul was still issuing franchises even though they knew it was in violation of the Ordinance. She said staff called the attorney for U-Haul and asked if this was in fact what they were doing and found that the attorney stated that was not their intention. Ms. Collins said it was U-Haul who pulled the trucks off the property and stopped Mr. Babazadeh's operation. She said the zoning office did not do that.

Mr. Pammel asked staff if the appellant could have the rental establishment as the principle use on the property through a special exception. Ms. Collins replied that the appellant could not just have a truck rental establishment, he would have to have another business such as his antique business. She said the appellant could operate in conjunction with his antique business if he received approval of a special exception.

Mr. Pammel asked if used car sales were a permitted use in the C-8 District as a freestanding use. Ms. Collins said used car sales were permitted by special exception.

William Shoup, Deputy Zoning Administrator, said the amendment stated that it was appropriate to only allow the truck rental establishments by special exception only if they were ancillary to a principle use on the property. He said the intent was to keep it a small ancillary type of operation.

Mr. Babazadeh said he had an occupancy permit for his antique shop that as stated in the staff report was declared vacant. He said the zoning office paralyzed his business for 10 months. He said his establishment was isolated and unless something else was there to bring in customers he could not do any business.

Chairman DiGiulian asked Mr. Babazadeh whether the zoning office did anything to the appellant to halt his antique business. Mr. Babazadeh replied yes stating that once they stopped the truck rental no one would come to his business because of his location. He said the reason he opened the car rental establishment was to bring customers to the antique shop.

Chairman DiGiulian asked the appellant since he was operating illegally what was the County supposed to do. Mr. Babazadeh said no where was it stated that a car rental establishment was illegal in the C-8 District.

Mr. Hammack asked Mr. Babazadeh whether he had applied for a special exception. Mr. Babazadeh replied that he had not because Mr. Shoup had told him that it would be denied.

Mr. Shoup replied stating there was a misunderstanding. He said he did not tell Mr. Babazadeh that the BOS would never approve his application. Mr. Shoup said Mr. Babazadeh had just went through the special exception process for a used car sales lot on the site and the application was denied by the BOS. He said staff pointed out to Mr. Babazadeh that if he filed a special exception for the truck rental establishment he would be faced with the same situation and possibly it would not be approved. Mr. Shoup tried to make it clear to Mr. Babazadeh that there was no guarantee that a special exception would be approved for a truck rental establishment.

Mr. Babazadeh said he wanted the BZA to establish that he could operate a rental business and go through the special exception process.

Chairman DiGiulian stated that it was clear that the U-Haul establishment was not allowed under the zoning category until the amendment, and then only under approval of a special exception.

Mr. Dively said the only solution was an application for a special exception.

Mr. Hammack told Mr. Babazadeh that the BZA did not have the authority to change what the BOS did as part of their legislative role.

Mr. Babazadeh submitted a letter to the BZA in which he believed the County made a deal with the U-Haul establishment to remove the trucks from his site. Mr. Shoup noted the letter was contained in the staff report as part of Attachment 1.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to uphold the decision of the Zoning Administrator. Mr. Pammel 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 628, July 14, 1998, (Tape 1), After Agenda Item:

Approval of July 7, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. 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 628, July 14, 1998, (Tape 1), After Agenda Item:

Planning Commission Requested Deferral
Church of Jesus Christ of Latter Day Saints
SPA 81-V-066-3

Mr. Dively moved to hear this request at the July 21, 1998, meeting to allow staff adequate time to contact the applicant pertaining to the request from the Planning Commission. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

Page 629 July 14, 1998 (Tape 1), After Agenda Item, continued from Page 628

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Page 629, July 14, 1998, (Tape 1), After Agenda Item:

BZA 1999 Meeting Dates

The Board of Zoning Appeals Members decided to discuss this item when there was full membership of the BZA present.

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As there was no other business to come before the Board, the meeting was adjourned at 12:08 p.m.

Minutes by: Regina Thorn

Approved on: October 20, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 21, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 8:00 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 631 July 21, 1998, (Tape 1), Scheduled case of:

8:00 P.M. BRENDA LUWIS & SATYENDRA SHRIVASTAVA, VC 98-D-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and an outlot, proposed lots 7, 8 and 12 having a lot width of 5.33 ft. Located at 962 Towlston Rd. on approx. 7.33 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 12 and 19-2 ((4)) B. (DEFERRED FROM 4/14/98 AND 5/19/98 FOR NOTICES).

Chairman DiGiulian announced that the notices were not in order for this case, that this was the third deferral request, and questioned if the applicant had given a reason for another deferral request.

Susan Langdon, Chief, Special Permit and Variance Branch concurred that the notices were not in order and that a letter from the applicant dated July 20th had requested this third deferral. She explained that the applicant had failed to send all of the required notices as well as return the completed package to the clerk's office. Ms. Langdon suggested a deferral date of October 6, 1998.

Mr. Hammack moved to defer VC 98-D-008 to October 6, 1998 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a 5-1 vote with Mr. Pammel opposed. Mr. Kelley was not present for the vote.

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Page 631 July 21, 1998, (Tape 1), Action Item:

8:00 P.M. J. K. AND MERIDITH A. WRIGHT, VC 98-D-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from side lot line. Located at 1062 Rector Ln. on approx. 45,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-3 ((8)) 11.

Chairman DiGiulian announced that the notices for this case were not in order.

Susan Langdon, Chief, Special Permit and Variance Branch, concurred explaining that two notices were improperly completed and that the applicant's agent was present to speak on this case.

Chairman DiGiulian called for the applicant or his representative to address the case.

Paul N. Hoofnagle, Rice Associates, 4001 Westfax Drive, Chantilly, agent for the applicants, explained that the correct notices were mailed in accordance with the tax records on hand and the two land owners who were missed submitted a waiver letter evidencing no objection to the variance request.

After reviewing the letters, Mr. Dively noted that everything appeared to be in order and then moved to have the Board hear the case. The motion was seconded by Mr. Pammel and carried by a unanimous vote of 7-0.

Ms. Langdon made staff's presentation as contained in the staff report dated July 14, 1998. She noted that the request to build a garage addition necessitated a 3-foot variance.

Mr. Hoofnagle explained that the yard's shape limited the location of the garage addition and that the addition would be compatible with the existing designs of the neighborhood. He added that the site's heavy vegetation would be preserved and that there was no objection from the neighbors for the garage addition. He deferred to the architect to respond to Mr. Hammack's question concerning the existing driveway.

Mr. Martin Rosenblum explained the driveway's size and configuration which was affected by the septic field which ran adjacent to the driveway.

Chairman DiGiulian called for speakers either in support or in opposition and receiving no response, closed the public hearing.

Mr. Hammack moved to approve VC 98-D-055 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated July 14, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

J. K. AND MERIDITH A. WRIGHT, VC 98-D-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from side lot line. Located at 1062 Rector Ln. on approx. 45,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-3 ((8)) 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 July 21, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. In order to protect the septic field, the garage required a little larger width.
- 3. The variance was minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.

Page 633 July 21, 1998 (Tape 1), J. K. AND MERIDITH A. WRIGHT, VC 98-D-055, continued from
Page 632

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Donald E. Schultz, dated March 11, 1998, 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. Pammel seconded the motion which carried by a unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 29, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 633 July 21, 1998, (Tape 1), Scheduled case of:

8:00 P.M. JOHN R. POKRANT, VC 98-Y-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from rear lot line. Located at 15391 Twin Creeks Ct. on approx. 15,387 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 361.

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 R. Pokrant, 15391 Twin Creeks Court, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report dated July 14, 1998. She noted that a 3-foot variance was being requested.

Mr. Pokrant explained that the orientation of the house on its shallow lot necessitated where the deck would be placed and he would want the gazebo to be farther than 3 feet from the house's stairway entrance. He pointed out that his rear lot opened up to a common area with no plans for development in the near future. Mr. Pokrant stated that their architectural review board had approved the deck's design.

Chairman DiGiulian called for speakers and receiving no response, closed the public hearing.

Mr. Pammel moved to approve VC 98-Y-064 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated July 14, 1998.

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**COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOHN R. POKRANT, VC 98-Y-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from rear lot line. Located at 15391 Twin Creeks Ct. on approx. 15,387 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 361. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 21, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The angle of the building's orientation on the lot was not parallel to the property line which made an extension of a deck difficult without the requirement for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

limitations:

- 1. This variance is approved for the location of a deck addition shown on the plat prepared by R. C. Fields, Jr., dated May 27, 1998 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 deck addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a unanimous vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 29, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 635 July 21, 1998, (Tape 1), Scheduled case of:

8:00 P.M. WOODY'S GOLF RANGE, INC. A VIRGINIA CORPORATION, SPA 79-D-176-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for golf driving range, baseball hitting cages and miniature golf course to permit modification to development conditions and site. Located at 11801 Leesburg Pi. on approx. 29.02 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 6-3 ((1)) 33 and 33A.

Chairman DiGiulian announced that the Board issued an Intent-to-Defer to October 6, 1998, but there was a letter requesting a further deferral as an After Agenda Item.

Susan Langdon, Chief, Special Permit and Variance Branch, concurred informing the Board that the applicant would be in court on October 6th and had requested a further deferral.

Mr. Dively suggested a date of October 13th and there being no objection, he moved to defer SPA 79-D-176-03 to October 13, 1998, at 9:00 a.m.

Mr. Ribble seconded the motion which carried unanimously by a 7-0 vote.

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Page 635 July 21, 1998, (Tape 1), Action Item:

Request for Reconsideration of VC 98-Y-058, Edward A. & Sylvia J. Storozuk,
15012 Ulderic Drive

Discussion followed among Board members and staff to consider fee amounts for refile and required action for granting a further deferral. Mr. Dively then moved to reconsider VC 98-Y-058 which was seconded by Mr. Kelley and carried unanimously by a 7-0 vote. Staff suggested several dates. Mr. Hammack then moved to rehear VC 98-Y-058 on September 15, 1998, at 9:00 a.m. The motion was seconded by Mr. Dively and carried unanimously by a 7-0 vote.

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Page 030 July 21, 1998, (Tape 1), Action Item:

Request for an Intent to Defer
Truck Rental Operations, A 95-P-054, Mike's Service Center, t/a Cedar Park Citgo;
A 96-M-034, Annandale Hardware & Supply Co., Inc./Poong Im;
A 95-B-045, Heritage Citgo; A 95-V-044, Paul G. Douglas

Susan Langdon, Chief, Special Permit and Variance Branch, called the Board's attention to the July 16, 1998, memorandum from William Shoup, Deputy Zoning Administrator, recommending that the BZA take action to further defer the public hearings on the subject appeals to January 5, 1999, except A 96-M-034 with a suggested date of January 12, 1999. There being no objection by the Board, Mr. Ribble So Moved which was seconded by Mr. Dively and carried unanimously by a 7-0 vote.

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Planning Commission Requested Deferral of SPA 81-V-066-3,
Church of Jesus Christ of Latter Day Saints

Discussion followed among Board members and staff concerning this deferral request. Mr. Dively then moved to accept the request to defer SPA 81-V-066-3 to September 29, 1998, which was seconded by Mr. Hammack and carried by a vote of 6-1 with Mr. Kelley opposed.

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Page 030 July 21, 1998, (Tape 1), Action Item:

BZA 1999 Meeting Dates

Discussion followed among Board members on the merit of assigning other BZA meeting dates besides the usually scheduled Tuesdays with the consensus that regularly scheduled public hearings on Tuesdays was familiar and habitual. There being no objection, Mr. Dively moved to schedule BZA hearings on only Tuesdays which was unanimously agreed with by the Board.

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Page 030 July 21, 1998, (Tape 1), Action Item:

Out-of-Turn Request for SP 98-M-036, Woodland Cooperative Pre School &
St. Paul's Episcopal Church

In response to Mr. Dively's question, Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that there was no dates before September 1st which were feasible.

Mr. Dively then moved to grant the out-of-turn hearing request for SP 98-M-036 for September 22, 1998, which was seconded by Mr. Pammel and carried unanimously by a 7-0 vote.

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Page 030 July 21, 1998, (Tape 1), Action Item:

Approval of July 14, 1998, Resolutions

Mr. Pammel moved to approve the July 14, 1998, Resolutions, with the exclusion of VC 98-Y-058, Edward A. & Sylvia J. Storozuk, 15012 Ulderich Drive, which was granted a reconsideration hearing.

Messieurs Dively and Ribble seconded the motion which carried unanimously by a 7-0 vote.

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As there was no other business to come before the Board, the meeting was adjourned at 8:32 p.m.

Page 031 July 21, 1998 (Tape 1), Action Item, continued from Page 030

Minutes by: Paula McFarland

Approved on: November 3, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 28, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Robert Kelley; James Pammel; and, John Ribble. Paul Hammack was absent for the meeting.

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 639, July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL W. AND KATHLEEN F. GAFFNEY, VC 98-Y-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from rear lot line and deck 8.6 ft. from rear lot line. Located at 3205 History Dr. on approx. 22,699 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 19.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition 6.3 feet from the rear lot line and a deck 8.6 feet from the rear lot line. The rear property boundary adjoins public park open space. A minimum 25 foot rear yard is required, therefore, a variance of 18.7 feet was requested for the sunroom addition and 16.4 feet for the deck.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the application property met the standards established for variances. The subject property was acquired by the applicants in 1979 and had characteristics of an extraordinary situation or condition which would limit reasonable development. The application property is located at the rear of the lot, only 25.9 feet from the rear lot line. A septic field is located in the front yard and no development is permitted in this area. The subject property is set back approximately 159 feet from History Drive. The subject property has a driveway and a garage that limited any type of construction within the eastern side yard. The house is located 12.6 feet from the west property line and 31.7 feet from the east property line. The combined distance is 44.3 feet which was only 4.3 feet greater than the 40 foot minimum required. The existing garage is entered on the side and therefore left no room to construct an addition on the eastern side of the house. The only area which would be feasible for an addition would be the rear of the property. The applicants proposal is compatible in size and character with the surrounding neighborhood. Ms. Strobel submitted a petition to the BZA, which was previously submitted to staff, that had been signed by the neighbors in the area which stated they had no objection to the variance and would support the approval.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-Y-060 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL W. AND KATHLEEN F. GAFFNEY, VC 98-Y-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from rear lot line and deck 8.6 ft. from rear lot line. Located at 3205 History Dr. on approx. 22,699 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 19. 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 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants have met the nine required standards for a variance application.
- 3. The variance is required due to the siting of the house on the lot because of the septic field in the front.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition and deck shown on the plat prepared by Paciulli, Simmons & Associates, LTD., dated April 14, 1998, 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. Dively was not present for 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 August 5, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MAI NGUYEN, VC 98-M-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line and accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6655 Kennedy Ln. on approx. 23,655 sq. ft. of land zoned R-1. Mason District. Tax Map 60-2 ((13)) 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. Mai Nguyen, 6655 Kennedy Lane, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a one and two story addition to be located 14 feet from the east side lot line. The minimum side yard requirement is 20 feet, therefore, a variance of 6 feet was requested. The adjacent resident to the east is located approximately 32 feet from the shared lot line. The subject application also requested approval to permit accessory structures to remain in the front yard. The accessory structures which currently exist include a detached three car garage, a storage shed and a gazebo.

Ms. Nguyen presented the variance request as outlined in the statement of justification submitted with the application. Ms. Nguyen stated she was requesting a 6 foot increase from the side lot line. Ms. Nguyen stated the designer of the addition called the County and was given incorrect information. The designer was told the lot was zoned R-2, which would allow the addition 15 feet from the lot line, however, the lot is zoned R-1. The structure was designed according to the R-2 district requirements and when the permit information was submitted, she was told that her property was zoned R-1, which would not allow this addition. She stated that the project was already paid for and that if the addition would have to be redesigned, she would have to take out the pond and two landmark trees in the rear yard to accommodate the change in design.

Chairman DiGiulian called for speakers in support of the application.

Mr. Thomas Foley, 3308 Horseman Lane, Falls Church, Virginia, came to the podium to speak in favor of the application. Mr. Foley stated that he lived directly opposite from the Nguyen's house and as a neighbor he had watched the improvements they had made to their property, which have benefitted both their property and the neighborhood itself. Mr. Foley stated that he favored the variance application and had no objection to the granting of this application.

Ms. Edna Wolfe, 6660 Kennedy Lane, Falls Church, Virginia, came to the podium to speak in favor of the application. Ms. Wolfe stated that she lived at this residence for 44 years and said it was great having the Nguyen family as neighbors and friends. Ms. Wolfe stated that the additional construction being requested would be an asset to Kennedy Lane and she had no objection to the granting of this application.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-M-059 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAI NGUYEN, VC 98-M-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line and accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 6655 Kennedy Ln. on approx. 23,655 sq. ft. of land zoned R-1. Mason District. Tax Map 60-2 ((13)) 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 July 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
- 3. The lot size involved is less than that required by the R-1 District, however, it meets the R-2 District requirements.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the one and two-story addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 16, 1998, 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 absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 643 July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. F & K MANAGEMENT, INC. T/A HARD TIMES CAFÉ, SP 98-L-016 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6362 Springfield Pl. on approx. 2.47 ac. of land zoned C-6, HC and SC. Lee District. Tax Map 80-4 ((9)) 10C pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, Agent, Hazel & Thomas, P.C. 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a special permit to establish a billiard and pool hall in conjunction with a restaurant use to be located within an existing shopping center. Ms. Wilson stated the application was in harmony with the Comprehensive Plan and the applicable Zoning Ordinance provisions with the implementation of the July 27, 1998 revised development conditions. Staff recommended approval of SP 98-L-016 subject to the July 27, 1998 development conditions.

Mr. Hanes, the applicant's agent, presented the special permit application as outlined in the statement of justification filed with the application. Mr. Hanes stated that the shopping center was rezoned in 1978. Due to the fact that the application property is a commercial center, there would be no adverse impact on anyone else in the area. Mr. Hanes stated that the application is compatible with all of the surrounding uses, and agreed with the staff report comments.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP 98-L-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

F & K MANAGEMENT, INC., SP 98-L-016 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6362 Springfield Pl. on approx. 2.47 ac. of land zoned C-6, HC and SC. Lee District. Tax Map 80-4 ((9)) 10C pt. 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 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The application is already in a commercial area.
- 3. The application will not change the use.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant, F & K Management, Inc. 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. These Development Conditions shall pertain only to the subject billiard and pool hall use, and to the space within the existing shopping center designated by this application for that use. These development conditions shall not limit or restrict other unrelated uses in the shopping center. Any special exception uses or special permit uses that may be approved elsewhere within the shopping center site shall not require a special exception amendment for this application use or site.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by The Tech Group, Inc., dated February 19, 1998, and approved with this application, as qualified by these development conditions.
- 3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 5. The applicant shall comply with all applicable alcoholic beverage control laws of the Commonwealth of Virginia.
- 6. Hours of operation shall not exceed 6:00 A.M. to 2 A.M., seven days a week.
- 7. Seating shall be limited to a maximum of 224 seats and 70 stools. Billiard/pool tables shall be limited to a maximum of 26.
- 8. Any and all signs and awnings associated with this use that are affixed to the building shall be architecturally compatible with the shopping center. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 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 August 5, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page LOE July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHURCH OF GOD OF PROPHECY, SPA 77-L-218-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-L-218 for church and related facilities to permit nursery school and child care center, and to permit reduction to minimum yard requirements based on error in building location to permit an accessory structure to remain 9.7 ft. from the side lot line. Located at 6409 Telegraph Rd. on approx. 2.95 ac. of land zoned R-1. Lee District. Tax Map 82-3 ((1)) 52. (MOVED FROM 7/14/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor David N. Hunter, Consultant, Spiritual House Church Planning, P.O. Box 2344, Dale City, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a special permit for a church and related facilities to permit a nursery school and child care center for a maximum daily enrollment of 44 children ages 2 1/2 to 5 years. No exterior construction was proposed to the church site other than the addition of play equipment to the proposed new play area. Proposed seating for the church was being reduced by 12 seats over what was previously approved by the BZA in order to accommodate the required nursery school and child care parking requirements. Also, the approval of an existing shed to remain 9.7 feet from the side lot line based on error in building location was being requested. Staff recommended approval of this application subject to the July 21, 1998 development conditions as contained in the staff report.

Mr. Ribble stated that in the staff report there is mention of traffic improvements to Telegraph Road and is concerned with the U-turns. Mr. Ribble asked staff what their position was due to the fact that was pointed out in the staff report.

Ms. Wilson stated that the reason for the notation was because recommendations were in the Comprehensive Plan for future road improvements to Telegraph Road. The improvements currently are not funded, but Ms. Wilson stated the recommendations would require improvement in this area and therefore, would impact the application site as noted in the staff report.

Mr. Ribble stated this issue concerned him, especially during rush hour, due to the U-turn with children in cars and vans going in and out of the site.

Ms. Wilson stated the reason for this being noted was so the applicant would be aware of what concerns staff had at this time.

Mr. Ribble asked when these improvements would happen.

Ms. Wilson stated that it was not on the 6 year plan; however, it was on the long term Comprehensive Plan and at this point, there was no date as to when these improvements would occur.

Mr. Hunter, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Hunter stated the request for the child care center for the church was an effort to serve the community. Mr. Hunter stated that he had some concerns with regard to the development conditions dated July 28, 1998. Mr. Hunter submitted a revised list of development conditions. Mr. Hunter stated that Pastor Dodson and himself met with DEM with regard to a minor site plan. DEM had informed them a minor site plan would not be necessary for this request. Some of the current conditions in the staff report would trigger a minor site plan even though it would not be necessary. Mr. Hunter referred to several development conditions as contained in the staff report and recommended edits to those conditions.

Mr. Hunter addressed Mr. Ribble's concern regarding the U-turn on Telegraph Road. The hours of operation were outside peak rush hour travel. He said the Office of Transportation did not have an overriding concern with regard to the access to this site. With regard to the error in building location, Mr. Hunter stated the shed had been in its location since the construction of the church. This is a condition that had been in existence for quite some time and was not noted in 1989 with an amendment to the special permit application. The applicant did not realize the shed was too close to the property line, therefore, they were requesting the approval of the error in building location.

Mr. Ribble asked if Mr. Hunter wanted to delete the word construction and replace with the word maintained on Development Condition 16. He stated that VDOT said the site entrance currently is 24 feet and should be 30 feet under their current standards.

Mr. Hunter stated that at the mouth the plat shows 32 feet which met the 30 foot requirement.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 77-L-218-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998, to include revisions submitted by Mr. Hunter on July 28, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHURCH OF GOD OF PROPHECY, SPA 77-L-218-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-L-218 for Church and related facilities to permit nursery school and child care center, and to permit reduction to minimum yard requirements based on error in building location to permit an accessory structure to remain 9.7 ft. from the side lot line. Located at 6409 Telegraph Rd. on approx. 2.95 ac. of land zoned R-1. Lee District. Tax Map 82-3 ((1)) 52. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has provided testimony before the Board, indicating compliance with the special permit uses.

Ms. Evanoff presented the variance request as outlined in the statement of justification submitted with the application. Ms. Evanoff stated that she had two additional support letters, three support letters had already been submitted to staff.

Mr. Dively asked staff if the deck could have been built when the house was constructed.

Ms. Evanoff stated that was correct, however, she had not wanted the builder to build the deck, due to poor workmanship. She stated the deck would be free-standing. When she had signed the contract for the house, she was told she could have a screened porch due to allergies. There would not be steps on the deck. The deck would be 12 feet along the house and come out 8 feet from the house. She stated that all adjacent properties were in agreement with the porch.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 98-L-051 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTHA P. EVANOFF, VC 98-L-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 6709 Donegan Ct. on approx. 6,455 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (44) 14. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Charles S. Downey, dated April 24, 1998, 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. Mr. Ribble was not present for 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 August 5, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 050 July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PETER & KRISTEN ANDREJEV, VC 98-D-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from one side lot line and 8.4 ft. from other side lot line. Located at 6804 Baron Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((8))(M) 42 and 43.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Pearson, Agent, 8961 Jasmine Court Manassas, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a front porch addition 8.4 feet from the one side lot line and 11.4 feet from the other side lot line. The minimum side yard requirement is 12 feet; therefore, variances of 3.6 feet and 0.6 feet were requested.

Mr. Pearson, the applicant's agent, presented the variance request as outlined in the statement of

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Church of God of Prophecy, 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 A Schoppet, AIA, dated June 17, 1998, as revised through June 25, 1998, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The maximum daily enrollment for the nursery school - child care center shall be limited to forty-four children, ages 2 1/2 to five (5) years in age. Maximum hours of operation for the nursery school - child care center shall be limited to 6:00 A.M. through 6:00 P.M., Monday through Friday.
6. Fifty-one (51) parking spaces shall be provided as shown on the special permit plat. All parking shall be limited to on site.
7. The applicant shall demonstrate to the satisfaction of the Department of Public Works and Environmental Services that required installation of fencing associated with the play area, and/or any other health or safety issues identified by the Fairfax County Health Department, have been completed and resolved to the satisfaction of the Health Department prior to the issuance of the Non-Residential Use permit for the new school facility.
8. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance. Non-conforming signs shall be removed.
9. The church seating capacity shall be limited to a maximum of 160.
10. In order to maintain the existing natural buffer between the adjacent residential properties, the existing vegetation along the northern lot line shall satisfy the requirement for transitional screening. Existing vegetation along the site frontage on Telegraph Road and along the eastern and southern boundaries shall be deemed to satisfy the transitional screening requirement.
11. Barrier requirements are waived in favor of conditions as shown on the special permit plat. The barrier measuring six (6) feet in height depicted on the northeast property boundary adjoining the Virginia Hills Subdivision property shall be installed and maintained in good repair at all times.
12. Any proposed new lighting of the parking areas or play area 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 grounds of the church facility.
13. Notwithstanding any plat notes or drawings, any and all land disturbing or grade alteration activities shall be in compliance with all current applicable standards and requirements of the Public Facilities Manual.
 14. Right-of-way as delineated on the SPA Plat shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County.
 15. The site entrance on Telegraph Road shall be maintained to VDOT standards.

These development conditions incorporate and supercede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 August 5, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively made a motion that he had erroneously adopted the wrong set of development conditions for the previously heard application, F&K Management, Inc. He stated that he had intended to adopt the revised proposed development conditions for SP 98-L-016 dated July 27, 1998.

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 648 July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARTHA P. EVANOFF, VC 98-L-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 6709 Donegan Ct. on approx. 6,455 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (44) 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. Martha Evanoff, 6709 Donegan Court, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch addition 18.5 feet from the rear lot line. The minimum rear yard requirement is 25 feet; therefore, a variance of 6.5 feet was requested.

justification submitted with the application. Mr. Pearson stated that currently the Andrejevs' have an unsafe condition at the front stoop. There were exceptionally high risers, loose bricks, loose slate steps and also the steps were exposed to the elements. Mr. Pearson stated they have small children and would like to build an open porch to the front of the existing dwelling. The lot is narrow and the dwelling already encroaches in the setback limits. The porch would extend the entire distance along the front of the house.

Chairman DiGiulian asked Mr. Pearson if it was correct that the addition would come no closer to either side lot line than the existing dwelling is now. Mr. Pearson responded that this was correct.

Peter Andrejev came to the podium to formally apologize to his neighbors for the current appearance of his porch. Mr. Andrejev stated that in October, 1997, the stoop needed repairs and had continued to need repairs since that time. Mr. Andrejev extended his apologies to his neighbors in that regard.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-D-054 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 21, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER & KRISTEN ANDREJEV, VC 98-D-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from one side lot line and 8.4 ft. from other side lot line. Located at 6804 Baron Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((8))(M) 42 and 43. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have presented testimony before the Board indicating compliance with the nine prescribed criteria for the granting of a variance.
3. This request is a very minimal request.
4. The request is an extension to the front which will not encroach into either side yard more than the present building does at this time.
5. The addition does not exacerbate the existing non-conformity.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the addition shown on the plat prepared by Kenneth W. White, dated April 3, 1998, 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1998. This date shall be deemed to be the final approval date of this variance.

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Page ~~63~~ July 28, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ANA P. FLORES, VC 98-L-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yard of a corner lot. Located at 6921 Floyd Ave. on approx. 14,009 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((2)) (2) 13. (DEFERRED FROM 6/2/98 FOR NOTICES).

Susan Langdon, Chief, Special Permit and Variance Branch, stated the notices were not in order. She stated the applicant had done the notifications, however, did not send them return receipt requested and therefore they were not in order. She said the applicant was present if the Board had any questions.

Chairman DiGiulian stated this would be the second time for a deferral due to notices. Chairman DiGiulian asked staff for a suggested date for a new hearing. Ms. Langdon stated the first open date would be

September 22, 1998. Mr. Dively questioned Ms. Langdon how many cases were currently scheduled for this date. Ms. Langdon replied that currently there were nine cases for this date.

Mr. Dively questioned how many of the nine cases were appeals. Ms. Langdon responded that two appeals were scheduled.

Chairman DiGiulian asked Ms. Flores if the September 22, 1998, date would be acceptable and asked if she could make this date. He further stated that if the notices were not in order for the newly scheduled public hearing, he would vote to dismiss the application.

Mr. Dively moved to defer the public hearing date to September 22, 1998. Ms. Gibb and 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 53 July 28, 1998, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS AND VERONICA BENSON, WOODLAWN KENNELS, INC., A 1998-LE-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that expansion of a nonconforming use, a dog kennel, is not in conformance with the approved Special Permit number 14117 nor with Par. 1 of Sect. 15-103 of the Zoning Ordinance. Located at 8340 Richmond Hwy. on approx. 14,418 sq. ft. of land zoned C-8. Lee District. Tax Map 101-4 ((1)) 4. (DEFERRED FROM 5/12/98).

Susan Epstein, Zoning Administration Division, stated the appeal related to a determination that the expansion of a nonconforming use, a dog kennel, was not in conformance with the approved special permit. She stated the property was developed with buildings and dog runs associated with the applicant's dog kennel business known as Woodlawn Kennels. The appellants use was initially established on October 23, 1956 subject to conditions. Under the Zoning Ordinance in effect at that time, the property was zoned general business district and kennels were designated as special permit uses. With the implementation of the current Zoning Ordinance on August 14, 1978, the property was zoned to the C-8 district. Since that day, kennels had not been allowed by special permit or under any circumstances in the C-8 district. In addition to the fact that the kennel became a nonconforming use, the use continued to be subject to compliance with the original special permit approval. Three separate buildings were depicted on the plat submitted with the special permit application. The three buildings were an existing one-story brick residence, an existing one-story cinder block building, both of which faced Richmond Highway, and a proposed kennel building located to the rear of these buildings. The approval was granted per the plat submitted. Although no dog runs were depicted on the plat submitted with the special permit application, it appears that dog runs were contemplated given that the special permit resolution permitted the operation of the dog kennel so long as the kennel and any associated runs would not be located closer than 20 feet to any property zoned residential.

Ms. Epstein stated based on a review of aerial photographs with staff of the County mapping office, many changes had occurred on the property since the original approval of the special permit. The structures and changes at issue with this appeal included the expansion of the original kennel building, roofed dog runs along the western side lot line, roofed dog runs along the northern rear lot line and a roofed porch addition on the rear of the kennel office building.

Ms. Epstein referred to the information presented in the staff report and stated it was evident that the roof alterations to the kennel building, the addition of the two roofed dog runs and the construction of the covered porch addition on the rear of the kennel office building did not satisfy the criteria of the definition of nonconforming building or use in that they were not lawfully existing on the August 14, 1978 effective date of the Ordinance. These changes constitute an enlargement and extension of a nonconforming use. In addition, the roof alterations constitute structural alterations as defined in Article 20 of the Zoning Ordinance. Ms. Epstein stated these types of changes were specifically precluded under the provisions of the Zoning Ordinance. Consequently, it was staff's position the appellants were in violation of that provision. In addition, the changes were not in conformance with the approval of the special permit.

Mr. Pammel stated that there may have been some modifications made over a period of time and stated that many of these additions were not permitted in staff's opinion. The additions appeared to be a result of improvement of the conditions related to the keeping of the dogs. He stated that these improvements not

only benefitted the operators but also the community. The State law required the operators of the kennel to make these improvements, which the operators complied with, and that County staff was responding that these additions violate the Zoning Ordinance. Mr. Pammel questioned staff as to what prevails, the State requirements or the County requirements. Mr. Pammel also expressed his concern with the interpretation of the aerial photographs. He referred to the expert for the appellants indicating that the quality of the maps was so poor that this determination could not be made.

Mr. Shoup stated that the issue of changes prompted by State law addressing kennel operations does not absolve a person from having to comply with the Zoning Ordinance. If they had to add a structure to the property, it would still be incumbent upon them to comply with Ordinance provisions. In this case, the use was a nonconforming use and there would be no remedy to get approval to do this.

Mr. Kelley asked staff if the County's position was to put someone out of business.

Mr. Shoup stated that was not the County's position, however, the result was that this could happen. Mr. Shoup stated that staff was only enforcing the Zoning Ordinance and there was no authority for County staff to ignore this sort of situation.

Mr. Kelley asked Mr. Shoup if there had been any other types of complaints regarding this operation. Mr. Shoup stated there may have been a noise complaint.

Mr. Dively stated the appellants can not win either way regarding this situation. He stated that there were overlapping beauacracies and statutes that had caused this problem that was not of their making.

Mr. Shoup replied that there was a proposed Zoning Ordinance amendment going to the Board of Supervisors for public hearings in the fall regarding kennels. This amendment would allow for indoor kennels to be operated on C-8 property, however, this would not help the appellant due to the fact that in addition to the indoor building he had outdoor kennels. This could be an option, however, substantial changes would need to occur to this operation.

Mr. Shoup, in responding to Mr. Pammel's question regarding the aerial photographs, stated that staff was relying on the County mapping office, Tom Merritt, who had been certified as an expert witness in court, regarding aerial photography interpretation. Mr. Shoup noted that Ms. Kelsey's expert described tree cover on the property which may have made it difficult to interpret, however, Mr. Merritt did not see any problem with tree cover on the property as that being a problem in identifying what was located on the property.

Ms. Jane Kelsey, the appellant's agent, presented the appeal. Ms. Kelsey stated that Mr. Benson was a certified kennel operator. He was a member of the American Board of Kennel Operators and a member of the Lee District Task Force and a citizen appointee to the Animal Shelter Advisory Commission. Ms. Kelsey stated that this would show that Mr. Benson does have the animals at heart. Ms. Kelsey had spoken with the Mount Vernon and Lee District Supervisors and had been told that there had not been any complaints concerning the kennel operation which was in a revitalization area and they believe that this was an asset to the revitalization area. Ms. Kelsey referred to the Zoning Administrator's contention that Woodlawn Kennels had violated the conditions of its special permit which was granted in 1956, of which it was alleged that most of those violations occurred after 1976 when Mr. Benson purchased the property. Ms. Kelsey stated that staff's position was based on the aerial photographs of the property through the years since the operation began in 1956. Ms. Kelsey questioned the quality of these photographs and the validity of the conclusions that had been drawn. Ms. Kelsey submitted to the BZA photographs of how the property exists currently. She also submitted a copy of her presentation for the record. In 1976, Mr. Benson obtained a written opinion from the Deputy Zoning Administrator, Wallace Covington, dealing with the continuation of a non-residential use permit (Non-RUP), where he had not made reference to a special permit. His findings were, since the Non-RUP was not granted to a specific person but for the use of a kennel, it was his interpretation that this operation could change ownership without having to go to the BZA for a special permit. She stated that there was nothing in Mr. Covington's statement which would indicate any special permit had ever been granted, only that if there was any change, addition or alteration to the facility or the land area, he would have to file an application to the BZA. No where did it state that there were any conditions connected with a special permit or with the Non-RUP. Therefore, Ms. Kelsey stated that Mr. Benson, having received the new Non-RUP and the opinion letter, purchased the property in good faith and continued to run the operation, and the property did contain runs, pens and a kennel building in the same locations as they were today. There was no record that he was told this use was under a special permit.

Ms. Kelsey referred to the staff report statement which stated it was assumed that Mr. Covington was not aware of the changes that had taken place since 1956, since the use was established. Ms. Kelsey contends that they could assume that Mr. Covington did know the condition of the property but believed the kennel was in substantial conformance with that special permit. Ms. Kelsey referred to an original file from archives, a card that was signed by two zoning inspectors and the dates of those inspections, saying that the application property was ok. In Ms. Kelsey's opinion, she stated Mr. Covington had full knowledge of Woodlawn Kennels when he made his determination and signed the Non-RUP in 1976. The question was whether or not Mr. Covington was in error when he did it, and since there were no substantial changes to the runs, kennel and operation since 1976, that he did not err which was supported by the affidavits submitted for the record of people who knew the kennel before and after Mr. Benson took over. Ms. Kelsey referred to the aerial photographs, which were analyzed by Mr. Richard Graham, who had no personal knowledge of the kennels, and stated that most of the photographs up to 1980 were of extremely poor quality and due to heavy tree canopy on the lot and the surrounding area, it was not possible to determine if there were any runs or pens under that canopy. Ms. Kelsey stated the appellant's position that the footprint and function of the runs and pens which exist today were the same as when the kennel was purchased by Mr. Benson in 1976 and the affidavit confirmation confirms that as well. Over the past 20 years things had changed. Mr. Benson was tired of having to repair roofs when the wind brought trees down from the adjacent property. With permission, Mr. Benson removed tree limbs which caused the thinning out of the canopy in the aerial photographs in the 80's. He had also brought the pens up to the standard for the Department of Agriculture and the American Kennel Association which required chain link fencing and steel post embracing. Ms. Kelsey contends that it was only temporary placement of pens and runs while another one was being repaired and brought up to the required standards. It was a systematic, orderly, above standard kennel operation. The outside runs were on gravel, and were not used to house the dogs at night. The dogs were only in those runs during the day for exercise, which had been done ever since Mr. Benson took over. Mr. Benson was an upstanding businessman in the community, he was well thought of, reputable, an asset to the Route 1 Revitalization area and to the community and the County. In summary, Ms. Kelsey stated that they do not deny the appellant performed maintenance among the kennels, runs and pens. In fact, it appears, this maintenance in the making of the kennel operation orderly, was what creates the illusion that new structures had been added since 1976. Woodlawn Kennels had not changed the basic structures since 1976, as confirmed by Mr. Grahams report and the affidavit. Ms. Kelsey asked the BZA to reverse the decision of the Zoning Administrator.

Mr. Shoup responded by referring to the issue of the 1976 determination of Mr. Covington. He stated one could not assume that he knew exactly what was on the property and was condoning what was on the property at that time to be legitimate. At that time he was answering a question if ownership could transfer without having to come back to the BZA. The point raised about the State Code which doesn't allow the Zoning Administrator to change her mind was not in effect in 1976 and didn't go into effect until 1993 or 1994. When that provision went into effect, it was known as being a prospective provision meaning it applied to any decisions after that State Code language went into effect, which was not applicable to Mr. Covington's decision. The bottom line was there may be some question on what the aerial photography shows. Staff was not 100% certain what was there but feel confident that Mr. Merritt's analysis was very accurate as represented in the staff report and there were not these structures on the property when this became a nonconforming use. The key was to look at two depictions of what was approved in 1956 showing two buildings and a proposed kennel building and that was constructed subsequent to the BZA approval, and clearly what was on the property today was a substantial enlargement of the use. With respect to the roofed dog runs along the northern and western property lines, they may have been there at a time around when it became a nonconforming use, but what was clear was they were not roofed at the time and what appears to staff was temporary roofing, but today, as shown in the pictures, was a substantial structure roofing over both runs. This would also include the expansion of the runs on both sides of the original kennel building. This was what was in violation as indicated in the staff report, a structural alteration cannot be made, per the Zoning Ordinance and State Code. Alterations that had been made were very clearly structural alterations and the addition of buildings that were not there at the time it became a nonconforming use. For this reason, Mr. Shoup asked that the BZA uphold the Zoning Administrator's decision.

Ms. Kelsey referred to the first depiction, which showed what was originally shown on the plat, however the approval stated they could have runs and it didn't say where they could be. The runs as they were today were still runs and pens, they were not part of the kennel as an enclosed building. It was not an enclosed building.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to reverse the Zoning Administrator's determination regarding appeal A 1998-LE-002. Mr. Kelley stated that he would "short trip" anything that would have occurred prior to 1976. Regardless of whether the law was perspective or not, a citizen had every right to depend upon a judgement by a County official, in this case Mr. Covington. It had to be assumed that he did his job and did it well. If he was not aware of what had gone on in this property, he should have been. Mr. Kelley stated that he believed the appellant had shown conclusively the runs were covered with patch work and this does not constitute a prohibited enlargement, expansion or alteration. Mr. Kelley stated to find otherwise would amount to a death sentence of many small business operations, not only kennels, but also other types of operations which had operated in this County for half a century. Therefore, the decision of the Zoning Administrator should be overruled.

Mr. Ribble seconded the motion.

Mr. Dively stated that he agreed with the motion, however, he stated he would not rely on the section of the Zoning Ordinance regarding changing a decision and believed there had been no enlargement, expansion or increase in intensity. What had happened was a consolidation or at best an improvement to meet statutory standards and/or association standards, which was not an enlargement or expansion under the Ordinance.

Mr. Pammel supported the motion as well with the observation that unlike today where orders and resolutions were specific, and plats show all of the improvements to be made, that was not the requirement at the time the kennel was approved. The language was rather loose and specifically stated that dog runs may be permitted. It did not state where, but does state they may be permitted. Given the testimony which had been received, it was clear they had complied with the spirit and intent of that order issued by the Board at that point in time. What this was, was a result of that order, but they were required to make improvements to meet the State guidelines, which they had done. You cannot argue effectively that these improvements were an expansion of the use. It was clearly permitted at the time this permit was approved. Obviously, there were two different opinions, however, in the staff report, staff did not state its findings conclusively, only vaguely. However, Mr. Graham had clearly stated the quality of the photography made it hard to determine what actually was there.

The motion to reverse the Zoning Administrator's determination carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 106 July 28, 1998, (Tape 1 & Tape 2), Scheduled case of:

9:30 A.M. ROBERT F. WHEELER, TRUSTEE, A 1997-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a storage yard and a junk yard in the R-1 District, all in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8270 Silverbrook Rd. on approx. 8.65 of land zoned R-1. Mt. Vernon District. Tax Map 107-1 ((1)) 1. (DEFERRED FROM 8/5/97; DEF. FROM 10/28/97 AT APPLICANT'S REQUEST; NOTICES MUST BE DONE; DEF. FROM 1/27/98).

William Shoup, Deputy Zoning Administrator, made staff's presentation stating that this was a reconsideration hearing. The appeal involved a determination that was set forth in a May 5, 1997 notice of violation that the appellant was maintaining a storage yard and a junk yard on the property in the R-1 District in violation of the Zoning Ordinance. At the time Mr. Wheeler was initially cited, there was a substantial amount of outside storage taking place on the property which included numerous inoperable vehicles, trucks, construction equipment, auto parts and other miscellaneous materials. Mr. Shoup stated the appellant did a considerable amount work to clean up the property which had significantly reduced the extent of the outdoor storage activity taking place on the property. What was at issue was whether the current storage activity constitutes a storage yard and junk yard. Recent inspection reveals there were still 8 inoperable vehicles/automobiles, 2 pick-up trucks, and other construction equipment and miscellaneous items stored on the property. Mr. Shoup passed around pictures which represented what currently was located on the property. While there had been a significant improvement, it was still staff's position, given the nature and extent of the current storage activity, the appellant continued to maintain

junk yard on the property and therefore remained in violation of Zoning Ordinance provisions.

Mr. Dively asked why the BZA moved to reconsider the appeal. Mr. Shoup responded that he was unsure of why they were hearing the case again.

Mr. Dively asked if the pictures submitted were the current status of the property. Mr. Shoup responded the pictures were taken on July 1, 1998.

Mr. Royce Spence, 7297-A Lee Highway, Falls Church, Virginia, the appellant's agent, stated he believed the appeal was being reconsidered so justice could prevail. The majority of the Board was present when the appeal was heard in April. Ms. Gibb went to the property. The 8.65 parcel was adjacent to the Lorton reformatory on two sides and because of the topography and vegetation, none of the property can be seen from the road. Staff originally entered the property under the assumption there was a repair facility located on the property, which was not the case. Then staff charged Mr. Wheeler with operating a junk and storage yard. Mr. Spence stated there was no number that limits the number of vehicles one could have on their property as long as it conforms to the definition of an accessory use. The automobiles located on the property were considered classic vehicles. It was Mr. Wheeler's intent to restore some of the vehicles for his own pleasure, for his hobby, and to use them for his own uses. Mr. Spence believed that automobiles were proper accessory uses. With regard to the construction equipment, they were also accessory uses. This is not a piece of equipment stored to be used somewhere else, it was a piece of equipment that was utilized on his 8.65 acre parcel of land. They might not be an accessory use on a 1/4 acre residential lot, but this was not the case here. Mr. Wheeler had a 1 acre garden. This equipment was used to work the garden. Mr. Wheeler had a long winding driveway and to keep this driveway in good condition the equipment was necessary. Mr. Wheeler also helps his neighbors gardens and driveways and streets in the winter time. Mr. Wheeler was supported by his neighbors and they believe he should be allowed to continue what he had been doing on this property over the years. They do not violate the section of the Ordinance which states you cannot park construction equipment. The equipment stays on the property and was used for the enjoyment of his property. The equipment was not stored, it was used on or about his property, therefore, it was not a violation of Section 10-102-16 as staff contends.

Mr. Dively asked both Mr. Spence and Mr. Shoup what the primary use of the property is. Mr. Spence replied the primary use was residential. Mr. Shoup replied the same.

Mike Bruns, 3905 Reeve Drive, Alexandria, Virginia, came to the podium to speak against the appeal. Mr. Bruns stated he was concerned with the fact of the changes coming forth in the area, with the closing of Lorton prison property. The property in question was being used as a junk yard. Mr. Bruns questions back-hoes being used to turn up gardens. It's time the situation be corrected and the property be cleaned up, environmental concerns should be addressed and all violations should be corrected. There was interest in developers and buyers of property around this area, whether you call it a junk yard or not, it was not contusive to what was going to be there in the future. Mr. Bruns encouraged the rejection of the appeal.

Mr. Kelley asked Mr. Bruns if he had been by the property recently and asked if he could see any of the vehicles in question.

Mr. Bruns stated he had and that vehicles could be seen from the top of Silverbrook Road if you looked backwards. However, from Silverbrook Road to where his driveway is, no you could not.

Mr. Ribble asked Mr. Bruns if he was planning on purchasing the property.

Mr. Bruns replied he wasn't, however, was interested in the whole area moving forward as planned and for future use. He does have property in the area and was interested in development of his own property.

Mr. Dively asked Mr. Shoup why the County doesn't believe paragraph 24 applies to this use regarding permitted accessory uses and outdoor storage.

Mr. Shoup stated that this section allows no more than 100 square feet of outdoor storage on residential property. This appeal property was at least 25,000 square feet of outdoor storage in the beginning and now more than 1,000 square feet of storage is occupying this property. To be a permitted accessory use, the definition must be met, which states, it had to be customarily found in association with the principal use and this number of inoperable vehicles and this amount of storage does not seem to be needed for daily use.

Mr. Dively asked Mr. Spence if he thought this use was a permitted accessory use. Mr. Spence replied that he believed it was a permitted accessory use and that Mr. Shoup was correct in stating the Ordinance read "customarily found in association with", but his point was what was customarily found in association with a larger parcel was different than what was on a 1/4 acre lot.

Mr. Dively questioned Mr. Spence regarding the 100 square foot limitation.

Mr. Spence stated if you were on a 1/4 acre lot, 100 square feet was a lot of storage, however, 1,000 square feet on 8 acres was practically nothing. Mr. Dively stated the statute stated 100 square feet.

Mr. Spence replied that was true, however, it also states you can have accessory uses as long as you meet the definition. Mr. Spence believes the definition had been met in this appeal.

Chairman DiGiulian questioned if the vehicles were part of the storage.

Mr. Spence stated that they were permitted under a separate section of the Ordinance. It states you can have inoperable vehicles as long as they were out of site.

Chairman DiGiulian stated the same could be true for the grader and the front end loader in his opinion.

Mr. Spence agreed with Chairman DiGiulian. He further stated the vehicles can be run. Mr. Wheeler had never been asked to start the vehicles, but they can be started and would run. The grader, back hoe and other pieces of equipment were certainly operable and Mr. Wheeler uses them all of the time.

Wendle Knix, 6802 Springfield, Virginia, came to the podium to speak in favor of the appeal. He stated he uses part of the 1 acre garden on Mr. Wheeler's property and stated the clean up on the property had been incredible, 5% of what it was originally. Perhaps you could see the property from the top of Silverbrook Road but you did not notice what was on the property. The garden tractor was used to plow the garden. The front end loader was used to plow manure on the garden, which then gets plowed in. The front end loader was also used for the driveway. The equipment was used on the property and had never been taken off the property, it was not stored on the property it was used there. For all practical purposes, this property was a small farm. Mr. Knix stated the original complaint was an anonymous source which bothered him as a citizen that the zoning system would act on an anonymous complaint.

Mr. Dively questioned Mr. Shoup regarding the complaint stating that he believed the County did not take anonymous complaints.

Mr. Shoup replied the complaint had come from the Mount Vernon District Supervisors office who filed the complaint with the Zoning Office.

Mr. Ribble asked if staff knew who had filed the complaint from the Supervisors office. He stated when he had called the Supervisors office no one knew of the complaint.

Doug Spalding, 8262 Silverbrook Road, came to the podium to speak in favor of the appeal. He stated that his home was totally encompassed by the Wheeler property. He was not aware of the violations on the property but noticed the equipment which was not a deterrent not to buy the property. Since he had moved in he had pruned trees to be able to see out onto the Wheeler property. He cannot see any equipment from his property. Mr. Spalding stated he enjoys his house and the landscape around his home and cannot see any of the items referenced in the appeal violation.

Gerald Bower came to the podium to speak in favor of the appeal application. He stated he was concerned with the way the County was moving. He referred to the staff report and its reference to a junk yard. There were 8 automobiles on the property, however, these automobiles were considered classic, collector automobiles. The 2 pick-up trucks were also both antiques. Regarding construction equipment, it was used for the maintenance of his property. Even if the inspector considers this junk, it was still not visible from the public roadway. A person would need to trespass upon the property to view these items. Mr. Bower stated he had lived in this County since the 50's and was concerned about the increased intrusion by the County into the private lives of its citizens. Laws and regulations were made subject to interpretation and the wise use of judgement in their application, he asked the BZA to use their wise judgement and not further intrude upon Mr. Wheeler's property, either his real property or his personal property.

Page 1039 July 28, 1998 (Tape 1), ROBERT F. WHEELER, TRUSTEE, A 1997-MV-016, continued from Page 1038

There were no further speakers.

Mr. Shoup stated, in response to Mr. Ribble's question, the complaint came from a Ms. Haddard in Supervisor Hyland's office. He also stated he did not believe she was with that office any longer. In terms of the vehicles being operable or inoperable, it was clear those vehicles were not tagged and do not have current inspections. He asked the Board to look at the pictures and determine how operable the vehicles might be and consider how many vehicles can a person have on their property as an accessory use. It was true you can have an inoperable vehicle as an accessory use on your property if you meet certain other criteria. However, he noted, if you have 8 or 10 inoperable vehicles on the property and they appear to have been in there current state for some time and it does not appear they had been worked on, in looking at the definitions of storage yard and junk yard, which was what the property was cited under, the extent of what was there meets these definitions.

Chairman DiGiulian asked Mr. Shoup how many vehicles could be kept on a lot of this size.

Mr. Shoup stated on a small 1/4 acre lot, 1 or 2 vehicles that were being worked on and being restored, a person was allowed to do this as an accessory use, if they adequately screen it under Chapter 10 of the Code. That was not what we had in this appeal. Just because Mr. Wheeler had 8 acres does not allow him to keep more vehicles. At some point you fall under the criteria of a storage yard, junk yard definition.

Mr. Kelley asked Mr. Shoup if his definition of an inoperable vehicle was one without tags or a current inspection.

Mr. Shoup stated that was what was generally used. However, staff does not enforce the inoperable vehicles provisions, this was transferred to the police department a number of years ago. Staff had referred to these automobiles as inoperable because of the junk yard provisions.

Mr. Kelley asked if that was the definition they used.

Mr. Shoup replied that was some of the criteria used. If it was not running, if the vehicle cannot operate, it would be more in line of what constitutes an inoperable vehicle.

Mr. Dively asked what if all the vehicles did run. Mr. Shoup stated it would still be considered a storage yard or junk yard.

Mr. Dively asked Mr. Spence whether the vehicles being operable or inoperable were an important issue to the case.

Mr. Spence stated it was important to Mr. Wheeler because he takes pride in these vehicles and they were not inoperable, they do run, and he was proud of his collectible vehicles.

Mr. Dively stated regardless of the pride issue, the County was trying to deal with whether or not it fits the statutory definition of a storage yard under Article 20.

Mr. Spence replied the Code clearly states "accessory uses shall include but were not limited to", as long as they meet the definition of accessory uses. This clearly meets the definition of accessory uses.

Mr. Dively stated it also met the definition of a storage yard. Mr. Dively read this definition to Mr. Spence. He asked Mr. Spence if it met the storage yard definition.

Mr. Spence stated it probably did if that was the only part of the Ordinance involved. Which one of the Ordinance sections would apply. It's a determination and that was why the appeal was before the BZA. Mr. Spence contends the accessory use ordinance applies, staff states it did not, it was a junk yard.

Mr. Dively stated clearly Mr. Wheeler was storing the vehicles operable or otherwise on the lot. One of the two had to apply, either the storage yard definition or the permitted accessory use definition, which had the 100 square foot limitation.

Mr. Spence stated the Ordinance says "but not limited to" therefore, there were accessory uses that can be

Page 100 July 28, 1998 (Tape 1), ROBERT F. WHEELER, TRUSTEE, A 1997-MV-016, continued from
Page 659

meet that definition.

Chairman DiGiulian asked if the accessory use had a square footage limitation.

Mr. Spence replied that it did not have a limitation.

Mr. Shoup made a correction in reference to the inoperable vehicle definition. Under Chapter 110 of the County Code, that definition states that if it does not have current tags and inspections they were an inoperable vehicle.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to overturn the determination of the Zoning Administrator because, although it was a close call, I am going to buy Mr. Spence's argument that these vehicles constitute accessory use. Therefore, the motion was to overturn the Zoning Administrators determination.

Mr. Kelley seconded the motion.

Chairman DiGiulian supported the motion and stated the vehicles and the other equipment were clearly permitted accessory uses. In that area you can drive by numerous properties and see back hoes, front end loaders, tractors, and they were used to maintain the property just like Mr. Wheeler does. Chairman DiGiulian supported the motion.

The motion carried by a vote of 4-2. Mr. Pammel and Mr. Dively opposed the motion. Mr. Hammack was absent from the meeting.

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Page 100 July 28, 1998, (Tape 2), After Agenda Item:

Additional Time to Commence Construction Approved
by SP 95-S-071, The New Jerusalem Church

Mr. Dively moved to approve the additional time request for twenty-four (24) months to August 21, 2000. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 100 July 28, 1998, (Tape 2), After Agenda Item:

Approval of July 21, 1998 Resolutions

Mr. Dively moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Deborah Hedrick

Approved on: October 20, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 4, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Robert J. O'Neil, the County Executive; Jim Zook, Director, Department of Planning and Zoning (DPZ); Barbara Byron, Director, Zoning Evaluation Division, DPZ; and Jane Gwinn, Zoning Administrator were present and discussed proposed Zoning Ordinance amendments pertaining to revitalization with the Board of Zoning Appeals.

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Chairman DiGiulian called for the first scheduled case.

Page 201 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BRICE KEEGAN, VC 98-P-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 10138 Palmer Dr. on approx. 14,299 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((5)) 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. Brice Keegan, 10138 Palmer Drive, Oakton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 10 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 5 feet was requested.

Mr. Keegan presented the variance request as outlined in the statement of justification submitted with the application. He said the variance request was to enclose the existing carport. Mr. Keegan said the foundation and the roof would remain the same. He stated that the addition would be more attractive than the existing carport. Mr. Keegan indicated that his neighbors had no objection to the application. He submitted a letter supporting the application from an adjacent neighbor.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 98-P-062 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 4, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRICE KEEGAN, VC 98-P-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 10138 Palmer Dr. on approx. 14,299 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((5)) 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 August 4, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The variance request was modest.

3. The proposed addition does not extend further than the current footprint of the existing carport.
4. The addition would be architecturally superior to the existing carport.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition (enclosure of existing carport) shown on the plat prepared by Bartlett & Chavez, Inc. P.C. dated September 8, 1976 and revised September 17, 1976, 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. Mr. Hammack and Mr. Pammel were not present for the vote.

Page 1003 (Tape 1), August 4, 1998, BRICE KEEGAN, VC 98-P-062, continued from page 1002

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 1003 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER S. MOLIVADAS, VC 98-B-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 8256 Branch Rd. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 13.

Susan Langdon, Chief, Special Permit and Variance Branch indicated that the applicant had called and asked to have his application moved to the end of the agenda and the Board concurred.

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Page 1003 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. LANGLEY CLUB, INC., SP 98-D-019 Appl. under Sect(s). 3-103 of the Zoning Ordinance for community swimming pool and tennis courts to permit building additions and site modifications. Located at 728 Live Oak Dr. on approx. 4.63 ac. of land zoned R-1. Dranesville District. Tax Map 21-1 ((1)) 7A and 8A.

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 Sadlik, Project Architect, 7536 Old Dominion Drive, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant request a special permit to permit building additions and site modifications. The proposed additions would include an open pavilion extension, handicapped accessible ramp for access to an existing deck and a trellis extension on the pool house. The club had been operational since 1953, however, additions and modifications previously approved by the BZA were never completed. The use was never officially established and the special permit expired. The applicant wanted to incorporate the site as it currently exists under special permit approval and sought approval of the above noted additions. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of the application subject to the development conditions.

Mr. Sadlik, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant just wanted to correct the lapse in the special permit and add handicapped accessibility.

Chairman DiGiulian asked Mr. Sadlik if he agreed to the conditions as stated in the staff report. Mr. Sadlik replied yes.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-D-019 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 4, 1998.

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COUNTY OF FAIRFAX, VIRGINIA
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LANGLEY CLUB, INC., SP 98-D-019 Appl. under Sect(s). 3-103 of the Zoning Ordinance for community swimming pool and tennis courts to permit building additions and site modifications. Located at 728 Live Oak Dr. on approx. 4.63 ac. of land zoned R-1. Dranesville District. Tax Map 21-1 ((1)) 7A and 8A. 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 4, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 728 Live Oak Drive (4.63 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 Donald R. Chandler, AIA, dated March 8, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The number of family memberships shall not exceed 300.
6. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. A minimum of 59 parking spaces shall be provided in the location shown on the special permit plat. All parking shall be on-site.
7. Lighting of the tennis courts shall focus onto the subject property to prevent light from projecting onto adjacent residential property.
8. Pool operating hours shall be limited to 8:00 A.M. to 10:00 P.M. No whistle, bell, buzzer, or starter clock shall be used prior to 8:00 A.M.. All After hours parties shall be in compliance with Development Condition Number 9.
9. After-hours parties for the Langley Club shall be governed by the following:
 - Parties shall be limited to eight (8) per season.

- 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.
 - Week night parties with written proof, upon demand by the Zoning Administrator, that contiguous residential property owners have agreed;
 - Parties shall not extend beyond 12:00 midnight;
 - Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season.
 - Requests shall be approved only if there are 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.
10. All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.
- If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged, and filtered prior to discharge.
 - Pool water shall be discharged slowly at a constant rate to prevent adverse impacts to the sanitary sewer drain and/or receiving streams.
11. Landscaping and existing vegetation along all lot lines shown on the Special Permit Plat shall be deemed to satisfy the transitional screening requirements. Existing trees and landscape plantings shall be maintained in good health and replaced as necessary with like-species plantings.
12. Barrier requirements along all lot lines shall be waived.

These development conditions supersede and incorporate all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Pammel were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 100 August 4, 1998, (Tape 1), Scheduled case of: WOS

9:00 A.M. GRACE ORTHODOX PRESBYTERIAN CHURCH, SPA 73-P-068 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-P-068 for church and related facilities to permit building addition and increase in land area. Located at 2381 Cedar Ln. on approx. 2.48 ac. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 31 and a portion of South Park St. which has been vacated and/or abandoned.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andres Domeyko, 10530 Rosehaven Street, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a church and related facilities to permit building additions and increase in land area. Proposed site modifications included improvements to the parking lot and enhanced landscaping. An on-site stormwater management pond is also proposed with this application. Subject to the proposed development conditions in Appendix 1 of the staff report, staff concluded that the subject application is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of the application subject to development conditions dated August 4, 1998.

Mr. Demeyko, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He suggested a revision to Condition #8 to resolve a transitional screening issue with an adjacent neighbor on the southern boundary. Mr. Demeyko stated that the applicant would eliminate an additional 5 parking spaces also to provide additional landscaping and buffering.

Chairman DiGiulian asked how many parking spaces would remain. Mr. Demeyko replied there would be 73 parking spaces.

Mr. Hammack asked staff whether they agreed to the suggested revision. Ms. Wilson replied yes.

Chairman DiGiulian called for speakers.

Laurie Loomis, 2385 Cedar Lane, Vienna, came forward to speak in opposition. Ms. Loomis expressed concerns pertaining to the stormwater management pond presenting a safety hazard for small children. She suggested that if the pond was a requirement, that a fence be erected surrounding the pond.

Mr. Demeyko, stated in his rebuttal, that the applicant would try to obtain a waiver for the stormwater management pond. He said having no fences on site was requirement by staff, but he wasn't sure if that applied to the pond.

Ms. Wilson stated that the pond would only hold water for up to 2 hours, but that the regulations would be determined at the time of site plan approval.

Chairman DiGiulian stated that he wanted the Board to impose a condition at this level.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 73-P-068 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 4, 1998 with an amendment to Condition #8.

Chairman DiGiulian amended the motion by adding a statement to Condition #12 pertaining to fencing around the stormwater management pond.

Ms. Gibb accepted the Chairman's amendment and the motion carried by a vote of 6-0-1, subject to the submission of a revised plat within 30 days of the public hearing. Mr. Pammel abstained from the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GRACE ORTHODOX PRESBYTERIAN CHURCH, SPA 73-P-068 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-P-068 for church and related facilities to permit building addition and increase in land area. Located at 2381 Cedar Ln. on approx. 2.48 ac. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 31 and a portion of South Park St. which has been vacated and/or abandoned. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1998; 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 2.48 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- * 1. This approval is granted to the applicant, Grace Orthodox Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
- * 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bowman Consulting Group, dated November 24, 1997, as revised through August 10, 1998 and approved with this application, as qualified by these development conditions.
- 3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment Plat and these development conditions.
- *4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 5. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance. Non-conforming signs shall be removed.
- 6. Church sanctuary seating shall be limited to a maximum of 200 seats.
- 7. A minimum of 50 parking spaces shall be provided and maintained. All parking shall be on site, as shown on the Special Permit Amendment Plat.

- *8. Transitional screening shall be modified in favor of that shown on the Special Permit Amendment Plat, except that a minimum of 20 feet of landscaped buffer shall be provided on the south boundary adjacent to residential uses, to the satisfaction of the Urban Forester. Parking configuration shall be redesigned along the south boundary to accommodate the 20 foot wide transitional screening buffer, to the satisfaction of DPW & ES.
- 9. Barrier requirements shall be waived for the perimeter of the site.
- *10. Right-of-way of forty-five (45) feet, as delineated on the SPA Plat, shall be dedicated to the Board of Supervisors, in fee simple, at time of site plan review or within sixty (60) days upon demand by Fairfax County, whichever is sooner.
- 11. Street entrances shall be designed and constructed to the satisfaction of the Department of Public Works and Environmental Services and VDOT.
- 12. Stormwater management for the application site shall be provided to the satisfaction of the Department of Public Works and Environmental Services. If a detention pond is provided, a childproof fence shall be provided around the pond, outside the stormwater management easement.
- *13. The area designated on the Special Permit Amendment Plat as "existing wooded area" shall be restricted in use to permanent open space. No structures or fences shall be added to the area. No and grading with an Urban Forestry Branch representative. Minor adjustments and revisions to the limits of clearing and grading may be made to the satisfaction of the Urban Forester.
- 14. Notwithstanding any plat notes or drawings, any and all land disturbing or grade alteration activities shall be in compliance with all current applicable standards and requirements of the Public Facilities Manual, as determined by the Department of Public Works and Environmental Services.

These development conditions incorporate and supercede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time 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 6-0-1. Mr. Pammel abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 108 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JUDITH A. & GERALD F. BANKS, VC 98-L-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 6207 Franconia Forest Ct. on approx. 8,420 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 81-3 ((22)) 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. Gerald Banks, 6207 Franconia Forest Court, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 4.9 feet was requested.

Mr. Banks presented the variance request as outlined in the statement of justification submitted with the application. He stated the lot was pie shaped and exceptionally shallow. Mr. Banks said the addition would not change the character of the neighborhood and was in harmony with the Ordinance.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 98-L-061 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 4, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JUDITH A. & GERALD F. BANKS, VC 98-L-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 6207 Franconia Forest Ct. on approx. 8,420 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 81-3 ((22)) 70. 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 4, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicant met the required standards for a variance.
- 3. The addition will not extend further than the existing deck.
- 4. The lot is irregular and pie shaped.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a single story addition shown on the plat prepared by Kenneth W. White, dated May 4, 1998, 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 single 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. 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 August 12, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. NORTHERN VIRGINIA PRIMITIVE BAPTIST CHURCH, SPA 88-P-088 Appl. under Sect(s) 3-103 of the Zoning Ordinance to amend SP 88-P-088 for church and related facilities to permit change in development conditions. Located at 9640 Blake Ln. on approx. 1.04 ac. of land zoned R-1. Providence District. Tax Map 48-3 ((1)) 51.

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the notices were not in order and suggested a deferral date of September 15, 1998, at 9:00 a.m. Mr. Dively moved to defer the subject application to September 15, 1998. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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9:00 A.M. IMMANUEL BIBLE CHURCH, SPA 80-A-058-3 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities to permit church with a school of general education which has an enrollment of 100 or more students daily, modify development conditions, construction of accessory structure. Located at 6911 Braddock Rd. on approx. 13.02 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 35, 36A; 71-4 ((2)) 1, 2, 3 and B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin Tompkins, Agent for the applicant, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested additions to the site and the retention of three temporary trailers. Two of the trailers were located within an enclosed courtyard for the church and school, and the third trailer was located adjacent to the church, next to the access drive that extends from Braddock Road. The modifications included: the construction of a 1500 square foot multiple vehicle garage and a privacy fence with a height of 7 feet, and the addition of 3,374 square feet of finished space within the unfinished crawl space of the existing church building for use as classrooms and meeting space. The school is approved under a Special Exception, but would now come under the provisions of the special permit amendment if approved. There were no other changes proposed to the number of seats, students, uses or structures on the site. In staff's evaluation, all land use, transportation or environmental issues had been addressed with approval of the development conditions. Staff noted that since the trailers were intended as a temporary use only, the development conditions proposed retention of the temporary trailers for one term of five years, rather than the renewable term requested by the applicant. Staff recommended approval subject to the revised development conditions. The changes reflected minor edits to the text of the conditions.

Mr. Tompkins, the applicant's agent, stated that the applicant concurred with the development conditions.

Chairman DiGiulian noted that the applicant had a problem with off site parking. Mr. Tompkins replied that the applicant was working on that issue with the surrounding shopping center.

Mr. Hammack asked if the applicant agreed with the term limit for the trailer. Mr. Tompkins replied yes.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 80-A-058-3 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 4, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IMMANUEL BIBLE CHURCH, SPA 80-A-058-3 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities to permit church with a school of general education which has an enrollment of 100 or more students daily, modify development conditions, construction of accessory structure. Located at 6911 Braddock Rd. on approx. 13.02 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 35, 36A; 71-4 ((2)) 1, 2, 3 and B. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6911 Braddock Road, (13.02 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Crigler Burke Architects (Donald S. Crigler, Architect) dated March 9, 1998 as revised through July 17, 1998, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.
- 5. All signs shall conform with Article 12, of the Zoning Ordinance.
- 6. Transitional Screening I shall be maintained in the following areas:

Along the portion of the eastern lot line adjacent to Lot 34;

Along the southern lot line

Along the side and rear lot lines of Lot 1;

Existing vegetation and additional plantings along the southern and eastern lot lines shall be maintained to satisfy the intent of Transitional Screening I. Dead and/or dying vegetation shall be replaced as determined by the Urban Forestry Branch of DPW & ES. The type, quality, size and location of these plantings shall be reviewed and approved by the Urban Forestry Branch, DPW & ES. Plantings along the western lot line shall be maintained as shown on the approved site plan for the existing buildings shown on the site. The purpose of the plantings adjacent to the western lot line shall be primarily to screen the parking lot and provide visual relief from the building addition. A fifteen foot wide strip of plantings shall be provided and maintained along the western side of the L-shaped addition as shown on the approved special permit plat. The purpose of these plantings shall be to screen the building addition. The Urban Forestry Branch, DPW & ES shall determine the type, quality, size and location for the plantings in these areas.

- 7. Foundation plantings shall be maintained around the buildings which soften and screen the visual impact of the buildings from surrounding streets. Dead and/or dying vegetation shall be replaced as determined by the Urban Forestry Branch of DPW & ES.
- 8. A six foot high solid wood fence shall be provided and maintained along the southern lot line as

shown on the special permit plat. A split rail fence shall be provided around Lot 1 as shown on the approved special permit plat. A 7 foot high solid wood fence shall be provided along the portion of the eastern lot line adjacent to Lot 34, as shown on the approved special permit plat. There shall be no outdoor storage of vehicles or equipment within any transitional screening yard along the eastern lot line.

9. Interior parking lot landscaping shall be installed and maintained in accordance with Article 13 of the Zoning Ordinance.
10. There shall be a maximum of 1,000 seats in the main area of worship and a corresponding minimum of 250 parking spaces. The maximum number of parking spaces shall be 420, in the locations shown on the approved plat. All parking for the church use shall be on-site.
11. The maximum daily enrollment for the private school of general education shall be limited to 370 students. Of the total 420 parking spaces provided on the site, 57 of those spaces shall be provided for the private school of general education. All parking for the school use shall be on-site.
12. Prescribed square footage of usable outdoor and indoor play area shall be provided in accordance with Sect. 8-307 of the Zoning Ordinance, and the Fairfax County Code, respectively.
13. The hours of operation for the school use shall be limited to 8:30 a.m. to 3:15 p.m., Monday through Friday.
14. The current average of 2.75 persons per vehicle arriving at the school shall be maintained. This average shall be achieved by carpools and the operation of school vans.
15. The temporary use of three (3) trailers is approved for a period of five years from the final approval of date of this special permit amendment.

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. 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 August 12, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 673 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. HILLTOP SAND AND GRAVEL COMPANY, INC., SP 97-L-037 Appl. under Sect(s). 3-103 and 4-603 of the Zoning Ordinance to permit commercial golf course, golf driving range, miniature golf course, baseball hitting range and accessory uses. Located at 7928, 7900, 7836, and 7950 Telegraph Rd. on approx. 106.19 ac. of land zoned R-1, C-6 and NR. Lee District. Tax Map 100-1 ((1)) 9 pt., 17 and 23A. (Associated with RZ 1997-LE-041, RZ 1997-LE-042, RZ

874

1997-LE-043, and SEA 78-L-074-5). (DEFERRED FROM 5/5/98)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Stackhouse, Emrich & Lubely, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, Rezoning and Special Exception Branch made staff's presentation as contained in the staff report. The applicant requested special permit approval to allow commercial and outdoor recreational uses consisting of: a thirty-six (36) hole miniature golf course, a fifty-(50) foot diameter outdoor batting range, a ninety (90)-tee golf driving range, a nine (9)-hole commercial golf course, and accessory uses, which include two (2) clubhouses.

Currently existing on the site is a forty (40)-tee golf driving range, a clubhouse and accessory uses. These uses were to be enlarged and incorporated into the applicant's current request. Also, a portion of the proposed commercial golf course is currently developed as a landfill. The landfill would be properly closed prior to the construction and use of the requested golf course.

On July 27, 1998, the Board of Supervisors approved three (3) associated rezonings and a special exception amendment with proffers and development conditions. Many of the proffers and conditions relate to the Special Permit uses requested.

Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval with the implementation of the development conditions dated June 24, 1998.

Ms. Strobel, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant received special exception and rezoning approval on July 22, 1998. She stated that the 18-hole golf course would be completed in 3 phases. Ms. Strobel said the community supported the application. She suggested a revision to Condition #4B.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 97-L-037 for the reasons noted in the Resolution subject to the Development Conditions, with the applicant's proposed revision, contained in the staff report addendum dated July 27, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HILLTOP SAND AND GRAVEL COMPANY, INC., SP 97-L-037 Appl. under Sect(s). 3-103 and 4-603 of the Zoning Ordinance to permit commercial golf course, golf driving range, miniature golf course, baseball hitting range and accessory uses. Located at 7928, 7900, 7836, and 7950 Telegraph Rd. on approx. 106.19 ac. of land zoned R-1, C-6 and NR. Lee District. Tax Map 100-1 ((1)) 9 pt., 17 and 23A. (Associated with RZ 1997-LE-041, RZ 1997-LE-042, RZ 1997-LE-043, and SEA 78-L-074-5). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application property contains 106.19 acres under this application with a subsequent phase to follow at a later date.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 4-603 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This Special Permit is approved for the location of a nine (9)-hole commercial golf course, a ninety (90)-tee golf driving range, a thirty-six (36)-hole miniature golf course, a fifty (50) foot diameter outdoor batting range, and accessory uses as shown on the plat prepared by Dewberry & Davis, dated May 5, 1997, as

revised through May 29, 1998, which was submitted with this application and is not transferable to other land.

2. **Safety**

- a. Prior to the issuance of a non-residential use permit for the commercial golf course, a professional engineer with expertise in geotechnical engineering and landfills shall be retained to certify that the site/grading plans have been prepared in accordance with the approved recommendations of the geotechnical report/closure plans and that the site/grading plans satisfy Section 9-205.9 of the Fairfax County Zoning Ordinance, as determined appropriate by the Director, DEM.
- b. Prior to the issuance of a non-residential use permit for the commercial golf course, the Director, DEM, shall be provided verification that the landfill has been closed (partial closure) to the satisfaction of the Virginia Department of Environmental Quality.

3. **Transportation/Parking**

- a. A continuous pedestrian travel-way shall be provided from Telegraph Road to the existing clubhouse.
- b. The proposed parking surfaces shall be maintained and landscaped in accordance with PFM standards as determined by DEM. Interior and peripheral parking lot landscaping shall be installed prior to the issuance of the non-RUP for the miniature golf course.

4. **Environment**

- a. A water quality impact assessment which demonstrates that the proposed uses will not exceed runoff and nutrient loading requirements for the Chesapeake Bay Preservation Ordinance shall be provided to the Director, DEM, prior to site plan approval.
- b. Prior to site plan approval, a streambank restoration and stabilization plan for the unnamed tributary on Parcel 23A shall be provided to and approved by the Director, DEM, consistent with that shown on Site Plan 3365-SP-02.

5. **Lights**

- a. All lighting on the application site shall conform to Group I standards as defined in Sect. 14-900 of the Fairfax County Zoning Ordinance.

- b. A maximum of ten (10), thirty (30)-foot high pole mounted lights and ten (10) ground mounted lights (directed parallel to the ground, not into the sky) shall be permitted to illuminate the golf driving range. The ten (10) pole lights shall contain a combined maximum of thirty-one (31) lumieres (i.e. light fixtures, light bulbs). Each ground mounted light shall contain no more than two (2) lumieres.

All lumieres for these lights shall not exceed one-thousand (1000) watts each.
- c. A maximum of three (3), twenty (20)-foot high lights shall be permitted directly east of the short-game practice area and putting/chipping green. Each pole shall contain no more than two (2) lumieres each with a maximum of one-thousand (1000) watts per lumiere.
- d. A maximum of fifteen (15), twelve (12)-foot high lights shall be permitted within the miniature golf area.
- e. A maximum of thirty-one (31), twelve (12)-foot high lights shall be permitted within the three (3) parking areas. Each pole shall contain no more than two (2) lumieres with a maximum of one-hundred-seventy-five 175 watts each.
- f. A maximum of eighteen (18), twelve (12)-foot high lights shall line the travel lanes. Each pole shall contains no more than one (1) lumiere with a maximum of one-hundred-seventy-five (175) watts.
- g. All lights on the application property, with the exception of necessary security lighting, shall be extinguished at closing.

6. Design/Style

- a. The proposed club house and any other buildings constructed on the Application Property shall be compatible with the existing buildings associated with the golf driving range located to the north of the Application Property. The buildings shall be integrated in design, style, materials and colors to the adjacent existing improvements, and shall be similar in appearance, color and materials to the conceptual elevation attached hereto as Exhibit A.
- b. All signs shall be designed and installed in accordance with Article 12 of the Fairfax County Zoning Ordinance.

7. General

- a. Two (2) foul weather shelters, not to exceed two-hundred (200) square feet each, may be provided in the vicinity of the commercial golf course. These shelters shall provide adequate ventilation in order to prevent the collection of methane gases and shall not be constructed on top of the area formerly used as a landfill.
- b. Sufficient green or black safety netting shall be provided in order to protect Parcels 19 and 20 from errant golf balls. Netting poles shall be of a natural wood color.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established 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.

Page 607 (Tape 1), August 4, 1998, HILLTOP SAND AND GRAVEL COMPANY, INC., SP 97-L-037, continued from page 607

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 607 August 4, 1998, (Tape 1), Scheduled case of:

9:30 A.M. MIKE'S SERVICE CENTER, T/A CEDAR PARK CITGO, A 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 services) in violation of 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.

Chairman DiGiulian noted the previously granted Intent to Defer to January 5, 1999 on July 21, 1998, for the subject application to give the appellant time to pursue special exception approval.

Mr. Kelley moved to defer the application to January 5, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 607 August 4, 1998, (Tape 1), Scheduled case of:

9:30 A.M. PAUL G. DOUGLAS, A 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 Ordinance provisions. Located at 6737 Richmond Hwy. on approx. 27,705 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. TaxMap 93-1 ((17)) 1A.

Chairman DiGiulian noted the previously granted Intent to Defer to January 5, 1999 on July 21, 1998, for the subject application to give the appellant time to pursue special exception approval.

Jonathan Hill, 2809 Sculy Drive, came forward to speak to the deferral. Mr. Hill indicated that the subject application had been deferred several times and he assumed since the property had been posted that the hearing would proceed as scheduled. He said he should have phoned first.

Mr. Kelley moved to defer the application to January 5, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 607 August 4, 1998, (Tape 1), Scheduled case of:

9:30 A.M. HERITAGE CITGO, A 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx. 10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1.

Chairman DiGiulian noted the previously granted Intent to Defer to January 5, 1999, on July 21, 1998, for the subject application to give the appellant time to pursue special exception approval.

Mr. Kelley moved to defer the application to January 5, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 678 August 4, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER S. MOLIVADAS, VC 98-B-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 8256 Branch Rd. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 13.

The Chairman called the subject case and the applicant still was not present. Mr. Dively moved to defer the subject application to September 22, 1998 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 678, August 4, 1998, (Tape 1), Action Item:

Request for Intent to Defer
Kartharias Inc, t/a The Shark Club Billiards and Café
A 1998-SU-001

Mr. Hammack moved to approve the request for Intent to Defer to August 25, 1998 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 678 August 4, 1998, (Tape 1), Action Item:

Approval of Revised Plat
Juan Cardenas, VC 98-P-026

Page 678 August 4, 1998, (Tape 1), Action Item, continued from page

Mr. Dively moved to approve the revised plat. Mr. Parmel seconded the motion which carried by a vote of 7-0.

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Page 678, August 4, 1998, (Tape 1), Action Item:

Approval of August 4, 1998 Resolutions

Mr. Hammack moved to approved the Resolutions. Mr. Dively 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 10:09 a.m.

Minutes by: Regina Thorn

Approved on: November 10, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on August 11, 1998. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Robert Dively and Nancy Gibb were absent from the meeting.

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 619 August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. EDWARD C. MURPHY AND MICHAEL D. SIMMONS, VC 98-V-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.0 ft. high fence to remain in front yards of a corner lot. Located at 8200 Mack St. on approx. 20,264 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((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. Edward C. Murphy and Michael D. Simmons, 8200 Mack Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit a 7.0 foot fence to remain in the front yard of a corner lot. The Zoning Ordinance permits a maximum fence height of 4.0 feet in the front yard; therefore, a variance of 3.0 feet was requested.

Mr. Simmons stated that he had been a resident of the Mount Vernon District for 18 years. He stated that his house was a detached house on a .5 acre lot on Mack Street with the side on Collingwood Road. Mr. Simmons stated he was requesting a variance to allow a 7.0 foot fence along Collingwood Road to remain.

Mr. Simmons stated that Collingwood Road was a heavily traveled road, which was designated as a secondary road. He said it was his belief that, under Section 10-104 of the Zoning Ordinance, a fence of up to 8.0 feet was permitted along a major thoroughfare, and even though Collingwood Road was not a major thoroughfare, over 6,000 vehicles, including emergency vehicles and school buses, traveled there each day. Mr. Simmons stated that the traffic created noise and dispensed fumes which the fence would mitigate.

Mr. Simmons stated that because the house was on a corner lot and faced Mack Street, the section along Collingwood Road was designated as a front yard by the Zoning Ordinance, but it was indeed a side yard. He stated that Section 10-104 of the Zoning Ordinance permitted a 7.0 foot fence for a side or back yard. Mr. Simmons stated that there were other corner lots on Collingwood Road that had fences exceeding 4.0 feet in height. He stated that he received phone calls and letters from his neighbors who all supported his application.

Mr. Ribble wanted to know if it was a complaint that brought the case before the Board. Mr. Bernal stated that it was through a Zoning Violation discovered by the Zoning Enforcement Branch. Mr. Bernal stated that he was not sure if it was because of a complaint or not.

Mr. Ribble said the staff report stated there were no other variances in the area, but that he could recall that there were several other variances for fences.

Mr. Hammack wanted to know from staff if the two existing 6.0 foot fences on corner lots on Collingwood Road were in violation. Mr. Bernal stated that he had not received any Notices of Violation on those properties.

Chairman DiGiulian called for speakers in support of the application.

Jack Keller, 8203 Mack Street, Alexandria, Virginia, stated that he was a real estate broker. He assured the Board that there were other fences on corner lots throughout the County and questioned whether or not they all had variances. Mr. Keller stated that the traffic on Mack Street traveled over the 35 miles per hour speed limit and the fence would provide safety for the residents.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 98-V-065 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD C. MURPHY AND MICHAEL D. SIMMONS, VC 98-V-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.0 ft. high fence to remain in front yards of a corner lot. Located at 8200 Mack St. on approx. 20,264 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 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 August 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants have satisfied the 9 required standards for the granting of this variance.
- 2. While the yard is classified as a front yard under the Ordinance, functionally, it is a side yard for the applicant.
- 3. The fence protects the property from the impact of the heavy traffic.
- 4. The fence is pulled back from the lot line and does not obstruct visibility of traffic.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a seven foot high fence in the location shown on the plat prepared by R. C. Fields, Jr., dated February 19, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 1081, August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. CECELIA FAIRCHILD, VC 98-L-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. from side lot line. Located at 7512 Lauralin Pl. on approx. 14,216 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2))(56) 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. Cecelia M. Fairchild, 7527 Lauralin Place, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a garage addition to be located 3.0 feet from a side lot line. The minimum side yard requirement in the R-3 District is 12 feet; therefore, a variance of 9.0 feet was requested.

Ms. Fairchild stated that she acquired the property in good faith and that the property was exceptionally narrow at the time of the effective date of the Ordinance. She stated that her husband was in poor health and a two-car garage would protect him from inclement weather. Ms. Fairchild stated that the intended use of the property would not be a detriment to adjacent properties. She stated that if the Ordinance was strictly applied, it would produce undue hardship due to her husband's health. Ms. Fairchild stated that there were several properties in the neighborhood with similar structure as the one she requested. She stated that the granting of the variance would not change the character of the zoning district and would be in harmony with the intended spirit of and purpose of the Ordinance.

Mr. Hammack wanted to know how close to the property line was the garage across the street was constructed. Ms. Fairchild stated that it was her belief that it was within 3.0 feet.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that in cases like this one where the variance resulted in a small side yard, he would be hesitant to move favorably. He stated that in this case, there was precedent because the lots were narrow. Mr. Pammel moved to approve VC 98-L-066 for the reasons stated in the Resolution.

During a discussion among the Board members, Mr. Kelley commented that this was a variance for a two-car garage, which would be 20 feet wide. He stated that 3 feet was too close. The motion carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CECELIA FAIRCHILD, VC 98-L-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. from side lot line. Located at 7512 Lauralin Pl. on approx. 14,216 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2))(56) 15. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant has met the 9 standards for the granting of a variance.
- 2. The lot is narrow.
- 3. Lot 23, which is directly across from the property, was granted a similar variance in March of 1992.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a

strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated January 20, 1998, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 083 August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ROBIN D. & LESLIE T. KEITH, SP 98-Y-023 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements of the R-C District to permit construction of addition 14.0 ft. from side lot line. Located at 6172 Hidden Canyon Rd. on approx. 14,280 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 53-1 ((3))(5) 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. Robin D. Keith and Leslie T. Keith, 6172 Hidden Canyon Road, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for modifications to the minimum yard requirements of the R-C District to permit construction of a deck and porch additions to be located 14.0 feet from a side lot line. A minimum side yard of 20.0 feet was required; therefore, the applicants requested a modification of 6.0 feet.

Mr. Keith stated that before the property was constructed, there was an 8.0 foot side yard setback requirement. He stated that the property was rezoned during construction to require a 20.0 foot setback.

Mr. Keith asked the Board to approve the variance for a setback of 16.0 feet instead of 14.0. He stated that he bought his home in good faith at fair market value and was told there were no unusual circumstances. Mr. Keith referred to other homes in the area where requests were granted for 2.5 feet, 15 feet, and 16 feet from the side yard setback and his was for 16 feet. He stated that this would be an undue hardship if the Ordinance were to be strictly applied. Mr. Keith stated that if the deck were to be placed in any other location that it would not match the structure of the house.

Mr. Ribble wanted to know if the porch would extend further than the house because this was a zoning change at the time the house was built and Mr. Keith replied that it would be 2.0 feet.

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There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing .

Mr. Ribble made a motion to approve SP 98-Y-023 for the reasons in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN D. & LESLIE T. KEITH, SP 98-Y-023 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements of the R-C District to permit construction of addition 14.0 ft. from side lot line. Located at 6172 Hidden Canyon Rd. on approx. 14,280 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 53-1 ((3))(5) 40. 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 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The home was acquired in good faith.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-913 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This special permit is approved for the location of a screened porch addition shown on the plat prepared by John E. Krobath of Charles P. Johnson & Associates, dated December 13, 1991, and revised by Randy Martin of Z&M Contracting, dated May 26, 1998 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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. THOMAS B. CHRISTEL, SP 98-Y-024 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 29.7 ft. from front lot line of a corner lot. Located at 11309 Full Cry Ct. on approx. 43,868 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((10)) 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. Thomas B. Christel, 11309 Full Cry Court, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for an error in building location to permit a garage addition to remain 29.7 feet from the front lot line. A minimum front yard of 40.0 feet is required; therefore, a modification of 10.3 feet was being requested.

Mr. Christel stated that he purchased the property in good faith in March of 1998. He stated that the home was a rental property and needed to be repaired. He further stated that he applied for a building permit on April 17, 1998, and was denied because of unforeseen zoning issues. Mr. Christel stated the Zoning Enforcement office informed him that he needed to apply for a special permit for an error in building location because the garage was built too close to the property line. He stated that in 1987, a building permit was obtained for the garage when it was built. He further stated that the plat showed measurements of 40.2 feet from the property line. Mr. Christel asked the Board to approve the special permit for the current site of the garage which would allow him to remodel the garage in order to enhance the property value of his home. He stated that the garage had been there for more than seven years, and to move it would cause him undue financial hardship. Mr. Christel stated that the building permit he applied for was to allow him to build a second floor breeze way between the garage and the house. He stated that this project would not impact the neighborhood.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve SP 98-Y-024 for the reasons stated in the Resolution

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS B. CHRISTEL, SP 98-Y-024 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 29.7 ft. from front lot line of a corner lot. Located at 11309 Full Cry Ct. on approx. 43,868 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((10)) 11. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, Certified Land Surveyor, dated February 13, 1998, revised May 27, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 1080 August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. MONA LISA & BENGT A. PETTERSSON, SP 98-D-018, 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 11.5 ft. from side lot line and 6.08 ft. from rear lot line. Located at 1502 Walden Dr. on approx. 11,940 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3((19))49. (Moved from 7/28/98)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Augustus S. Anderson, 1450 Cedar Avenue, McLean, Virginia, replied that it was.

Jaun Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a modification to the minimum yard requirements based on an error in building location to permit an accessory structure to remain 11.5 feet from the side lot line and 6.08 feet from the rear lot line. Minimum yard requirements were 12.0 feet and 25.0 feet respectively; therefore, modifications of 0.5 feet for the side yard and 18.92 feet for the rear yard were being requested.

Mr. Anderson, the applicant's attorney, stated that the case involved a tree house that the applicant built in his rear yard. He stated that the tree house was a low profile structure that blended in with the trees and was screened by the leaves and tree trunks. Mr. Anderson referred to his April 30, 1998, letter of

justification that addressed the statutory points involved in this issue. He stated that before the structure was built, Mr. Pettersson called the permit branch to make inquiries about obtaining a building permit and found out that one was not needed. Mr. Anderson further stated that Mr. Pettersson was not aware of any zoning requirements or setback requirements, so he proceeded to build the structure. Mr. Anderson stated that the case came about because there was a complaint made by a former neighbor, who had since relocated. He said the new neighbors supported the special permit. Mr. Anderson read a letter of support from this new neighbor. He also stated that the tree house would not be a detriment to the neighborhood.

Mr. Hammack wanted to know how old the applicant's daughter was.

Lisa Marie and Bengt Pettersson, both spoke to the justification and in support of the application.

Lisa Marie Pettersson, 1502 Walden Drive, McLean, Virginia, stated that she was 15 years old. She stated that her father built the tree house for her after a long time of her asking for it. She stated that it would be a shame to have the tree house torn down because the other neighbors loved it and it was a wonderful place for a tree house.

Bengt Pettersson, the applicant, 1502 Walden Drive, McLean, Virginia, stated he built the tree house because it was his daughter's wish for it to be built. He stated that his family lived in Potomac Hills for 17 years because it was a wonderful surrounding for his children.

Mr. Hammack wanted to know if a building permit would be required for the structure, and if so, would it have to meet minimum standards for strength.

Mr. Bernal responded by saying that as best to his knowledge, a building or structure that needed footers would require a building permit, but as far as it being in a tree, he was not sure of the footers.

Mr. Hammack wanted to know about the sides and the pressure around the railing at the top of the platform. He said he was told that the railing had to meet 200 pounds per square foot around the deck.

Susan Langdon, Branch Chief, Special Permit and Variance Branch, stated that it was her understanding the deck would not be inspected if a building permit was not needed and that only things with footers needed a building permit. She said the applicant stated he called the building permit section to see if a permit was needed and was told they did not.

Mr. Anderson stated he had been in the tree house and that it was well constructed. He confirmed staff's statement that no permit was required.

Mr. Ribble wanted to know what kind of engineer the applicant was. Mr. Pettersson stated he was an electrical engineer, but that he also received training in house building as part of his education while in his home country of Sweden. Mr. Pettersson further stated that he was the builder of the deck, which was built and inspected according to County standards.

There were no other speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny SP 98-D-018. He stated that the case came before the Board because of a complaint that was made by a neighbor who no longer lived there. Mr. Hammack stated that a platform 20.0 feet high in a tree that is next to a property line was not in compliance with the Ordinance. He stated that even though the complainant was not in the neighborhood at the present time and was not objecting to it, was not a reason for the Board to bend standards. He further stated that he was not satisfied that the structure and access to the structure, which included a removable ladder, was a safe condition under the Ordinance. This motion failed for lack of a second.

Mr. Pammel made a motion to approve SP 98-D-018 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MONA LISA & BENGT A. PETTERSSON, SP 98-D-018, 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 11.5 ft. from side lot line and 6.08 ft. from rear lot line. Located at 1502 Walden Dr. on approx. 11,940 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3((19))49. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an accessory structure (treehouse) shown on the plat prepared by Harold A. Logan, Certified Land Surveyor, date March 13, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 4-1. Mr. Hammack voted nay. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 1089, August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. STEVEN M. HELMRICH, SP 98-S-026 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6300 Colchester Rd. on approx. 1.69 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((7)) 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. Steven M. Helmrich, 6300 Colchester Road, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for modification to the limitations on the keeping of animals in order to have up to two horses on the property. The Zoning Ordinance required a minimum of 2 acres for the keeping of horses. Staff recommended approval of the application subject to the Development Conditions contained in the staff report.

Mr. Helmrich stated that he had resided at this property since 1984. He stated that most of the properties in the area were between 1 to 5 acres in size. Mr. Helmrich asked the Board to permit him to keep up to two horses for pleasure purposes. He stated that this would be consistent and harmonious with other properties in the area. He said the area was safe and most of the neighbors in the area maintained horses. Mr. Helmrich made reference to Page 8 of the staff report. He stated that prior to making this application, he wanted to know if his neighbors objected to his keeping two horses. He stated that the neighbors were not in opposition and they signed a petition of support.

Mr. Helmrich stated that, in Fairfax County, one could maintain horses on two acres of land and beyond the two acres minimum, one animal unit per acre was allowed.

There were no speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to approve SP 98-S-026 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN M. HELMRICH, SP 98-S-026 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6300 Colchester Rd. on approx. 1.69 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((7)) 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 August 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6300 Colchester Road, 1.69 acres, shown on the plat submitted by Steven M. Helmrich, dated August 8, 1984, as revised through July 20, 1998, 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 no more than two horses. The existing chicken coop and sheds and the domestic fowls residing in the enclosures shall be removed.
4. The yard used for the horses shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.

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. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 6090 August 11, 1998 (Tape 1), Scheduled case of:

9:00 A.M. KARHARIAS INC. T/A THE SHARK CLUB BILLIARDS & CAFÉ/THE SHARK CLUB, SPA 95-Y-069 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 for billiard hall to permit building additions and change in development conditions. Located at 14114-14116 Lee Hwy. on approx. 8.6 ac. of land zoned C-7, HC, SC, and WS. Sully District. Tax Map 54-4 ((1)) 8C.

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 B. Lawson, Jr., Lawson & Frank, P.C., 6045 Wilson Boulevard, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant had an outstanding Notice of Violation that was issued by the Zoning Enforcement Branch on December 24, 1997. The Notice of Violation indicated that the applicant made structural additions to the facility that were not in compliance with the approved special permit, a trailer was kept on site for storage that was not permitted, the number of seats within the facility exceeded the 120 seat limitation, which was established in the conditions of approval for the special permit. Ms. Schilling stated that complaints were received by the Fairfax County Police Department regarding noise and other disturbances resulting from the operation of the billiard hall and the eating establishment. In order to address these issues, the applicant was requesting to amend SP 95-Y-069, that was approved on January 23, 1996, for a billiard hall to permit an increase in the number of restaurant seats from 120 to 160, plus outdoor seating of 80 seats. The applicant also requested the addition of two outdoor walk-in refrigeration units, extension of the loading dock, closure of the front of the building to allow year round seating, and enclosure of a staircase on the north side of the building, all of which were existing but not approved under SP 95-Y-069. Staff recommended approval in accordance with the proposed development conditions.

Page 091, August 11, 1998, (Tape 1), KARHARIAS INC. T/A THE SHARK CLUB BILLIARDS & CAFÉ/THE SHARK CLUB, SPA 95-Y-069, continued from Page 090

Mr. Lawson, the applicant's attorney, stated the family who owned the Shark Club had been in the restaurant business for over 40 years. He presented a list of other restaurants owned by the applicant.

David Tarter, Lawson & Frank, P.C., 6045 Wilson Boulevard, Arlington, Virginia, presented a layout of the Newgate Shopping which housed the Shark Club. He stated that the matter began when the Shark Club was cited for violations by the Zoning Enforcement Branch on December 24, 1997. Mr. Tarter stated that the situation regarding the violations have improved. He stated that the plans were submitted to the County, building permits were issued, construction was completed, inspection was done and approved, but the County stated that the building was done in error. Mr. Tarter stated that the citation was appealed and an application for the special permit amendment was submitted. He stated that he met with citizens and staff in order to receive their comments. He further stated that one of the issues that was of interest to the community was security concerns. Mr. Tarter stated that the applicant had several meetings with the Fairfax County Police Department in order to develop ways to coordinate their efforts and improve cooperation in the general operation of the establishment. He stated that the applicant hired an outside security expert to train employees on security issues. He also said the applicant installed six security cameras on the outside of the establishment and seven cameras inside. Mr. Tarter stated that the noise problem was under control and that the applicant patrolled the parking lot to ensure patrons departed promptly and quietly. He further stated that the number of police calls had decreased.

Mr. Lawson stated that he received outstanding cooperation and assistance from the shopping center landlord, the community and County staff while trying to amend the special permit application. He stated that there was an agreement between the Post Commons Apartment Management, staff, and the applicant to eliminate the request for seasonal outdoor seats, closest to the apartment, listed in Development Conditions 5 and 7 of the staff report. Mr. Lawson stated he had a petition of support from the community which he presented for the records.

Mr. Kelley wanted to know if strippers were prohibited under the Alcohol Beverage Control law. Mr. Lawson stated that strippers and striptease probably were but bathing suit, underwear, costumes or contests probably were not. Mr. Kelley wanted to know if there were other sports clubs with the same activities and Mr. Lawson stated that he understood that the other types of events happened at other establishments with the exception of strippers and striptease. Mr. Kelley wanted to know if Mr. Lawson heard the results of the ABC hearing and Mr. Lawson stated that he did not but that it probably would be late October or early November before he heard.

Mr. Hammack wanted to know if the improvements on the plat were included in the lease with the landlord and Mr. Lawson stated that the landlord was in concurrence with the conditions.

Mr. Hammack wanted to know if there would be sufficient room on the east side to increase from 30 to 50 seats. Mr. Lawson stated that it was his belief there was sufficient room. Mr. Lawson stated that the applicant would file for a Non-Residential Use Permit (Non-Rup) which would be sent to the fire marshal.

Mr. Hammack stated that he did not want an overflow of people on the outside because that would be a violation. He stated that as long as the seating was controlled by the fire marshal, he would not have a problem. Mr. Hammack also wanted to know how many security people were employed. Mr. Lawson said there were six employees who monitored security and that the cameras were only monitored during peak operation.

Mr. Hammack wanted clarification on the number of police calls received in 1997.

Mr. Tarter stated that the Fairfax County Police Department did not have a definitive number through this portion of the year. He referred to an article in the Centreview, in which the police department was quoted as saying there was "a significant decrease." Mr. Lawson read the article which appeared in the Centreview.

Mr. Ribble commented that he believed that most of the calls to the police department were made by the owners, who were trying to keep things under control.

Mr. Hammack wanted to know if the applicant agreed to Condition 7 of the staff report and Mr. Lawson replied that he did.

Mr. Kelley wanted to know what was behind Condition 10. Mr. Lawson stated that there was a trailer that was being used for storage but it would be removed.

Mr. Hammack asked if the police logs were kept up to date.

Mr. Shoup responded to the question about the police activity. He introduced Robert Ross, Fairfax County Attorney's Office, who represented the police department with legal matters. Mr. Ross stated that the police logs were kept up to date, but the difficulty arose because there were police generated calls. He stated that there were also acts observed by the police that would be recorded in the same way. Mr. Ross stated that the police method of keeping this information would accurately reflect the calls for service. He stated that the number of police calls were significantly reduced from the amount received in 1997.

Chairman DiGiulian called for speakers in support of the application.

Sarah Hall, Blankenship and Keith, representative of Post Corners Apartments, Centreville, Virginia, stated that they previously objected to the outdoor seating north of the building, but with the changes suggested by Mr. Lawson, the objection was withdrawn.

There were no other speakers in support or in opposition and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve SP 95-Y-069 for the reasons stated in the Resolution.

There was a discussion among Board members concerning the imposition of Condition 8. It was agreed that the ABC could control the compliance with their regulations and that they would conduct periodic inspection to ensure the rules were being followed.

Mr. Pammel stated that he would like to see a report at the end of 1998, as well as 1999, showing the number of calls made to the police and the nature of the calls.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KARHARIAS INC. T/A THE SHARK CLUB BILLIARDS & CAFÉ/THE SHARK CLUB, SPA 95-Y-069 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 for billiard hall to permit building additions and change in development conditions. Located at 14114-14116 Lee Hwy. on approx. 8.6 ac. of land zoned C-7, HC, SC, and WS. Sully District. Tax Map 54-4 ((1)) 8C. 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 11, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the Lessee of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is not transferable to other land. Other by right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by The Tech Group Inc., (Anthony Morse) dated March 31, 1998, as revised through April 7, 1998, and signed May 13, 1998, approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat and these development conditions.
5. The 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 as determined by DPZ, and shall be subject to the requirements of Article 12 of the Zoning Ordinance.
7. The maximum number of employees on-site shall not exceed 16 at any one time. The maximum number of pool/billiard tables within the use shall not exceed 22. Within the building the maximum number of eating establishment tables shall not exceed 160 seats, and the maximum number of bar seats shall not exceed 70. Seasonal outdoor seating shall not exceed 50 seats on the east side of the building in the area shown on the special permit plat. There shall be no seasonal outdoor seating on the north side of the building. Irrespective of that shown on the special permit plat, a minimum of 162 parking spaces shall be provided on-site as shown on the plat, based upon the formula for calculating parking as follows: 1 parking space for every three persons using the billiard tables, using 8 persons for each billiard table, 1 parking space for every 4 eating establishment table seats (both indoor and outdoor), 1 parking space for every 2 bar seats, and 1 parking space for every 2 employees present at one time. Prior to the issuance of a Non-Rup, the applicant shall prepare a parking tabulation revision for the review and approval of the Department of Public Works and Environmental Services, (DPW & ES) and Zoning Permit Review Branch of the Department of Planning and Zoning (DPZ), reflecting all current uses on the site, to verify that adequate parking exists on the site to serve all uses. If it is determined that adequate parking does not exist on the site to accommodate the billiard hall, the maximum number of seats for the eating establishment shall be reduced to meet the parking spaces available for the use. Two parking spaces shall be reserved for the use of a limousine; limousines shall be prohibited from parking or standing at the front curb for the billiard hall.
8. No events such as those that feature strippers, stripteases, bathing suit, or underwear costumes or contests shall be permitted.
9. No trailers used for storage or any other purpose shall be permitted for this use.
10. No further additions or expansion to the billiard hall or eating establishment shall be permitted without approval of an amendment to the special permit.

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.

Page 6094, August 11, 1998, (Tape 1), KARHARIAS INC. T/A THE SHARK CLUB BILLIARDS & CAFÉ/THE SHARK CLUB, SPA 95-Y-069, continued from Page 6093

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval* unless a new Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may grant additional time to 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 5-0. Ms. Gibb 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 19, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 6094, August 11, 1998 (Tape 1), Scheduled case of:

9:30 A.M. KARHARIAS, INC., T/A THE SHARK CLUB BILLIARDS AND CAFÉ/SHARK CLUB, A 1998-SU-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that an enclosed seating area addition, an enclosed staircase addition, two walk-in refrigeration units and an expansion of the loading dock have been constructed or installed in violation of approved Special Permit SP 95-Y-069 and without site plan or proper Building Permit approval. Located at 14114 and 14116 Lee Hwy. on approx. 406,184 sq. ft. of land zoned C-7, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 8C. (DEFERRED FROM 4/7/98, 7/14/98).

Chairman DiGiulian stated that the Board issued an intent to defer to August 25, 1998. Mr. Lawson was asked if he wanted to withdraw the appeal application given that the special permit amendment had been approved, and he stated that he would.

Mr. Lawson was advised to follow up his request to withdraw the appeal in writing.

Mr. Kelley made a motion to withdraw the appeal. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 6094, August 11, 1998 (Tape 1), Scheduled case of:

9:30 A.M. ANNANDALE HARDWARE & SUPPLY CO., INC.--POING IM, A 96-M-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that 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 4709 Backlick Rd. on approx. 20,007 sq. ft. of land zoned C-5. Mason District. Tax Map 71-1 ((1)) 123. (MOVED FROM 1/29/96, 2/11/97, 5/13/97, 7/22/97, 10/28/97, 2/10/98 AND 6/30/98).

Chairman DiGiulian stated that the Board issued an intent to defer to January 12, 1999. Mr. Pammel made a motion to approve the deferral date. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 6094, August 11, 1998 (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing, Joan P. Smith, VC 98-D-092

Mr. Pammel stated that he read the request for an Out-of-Turn-Hearing. He stated that events over many years brought about the situation that the applicant now faced. He said the applicant presented a case for an expeditious hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the case was scheduled for

Page 695 August 11, 1998, (Tape 1), After Agenda Item, continued from Page 694

October 27, 1998. She said October 20, 1998, was a night meeting which had one appeal scheduled, and on October 13, 1998, there were nine cases scheduled. She stated that all other dates had at least ten cases.

Mr. Pammel made a motion to have the case rescheduled to October 13, 1998, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 695 August 11, 1998 (Tape 1), After Agenda Item:

Approval of August 4, 1998, Resolutions

Mr. Pammel made a motion to approve the August 4, 1998, Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:37 A.M.

Minutes by: Ann-Marie Wellington

Approved on: October 13, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 18, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:05 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the last scheduled case.

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Page 01, August 18, 1998, (Tape 1), Scheduled case of:

8:00 P.M. STEPHEN L. CLEMENT, A 1998-PR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining a junkyard in the R-1 District and has erected a fence exceeding 4 ft. in height in the front yard and 7 ft. in the side yard, all in violation of Zoning Ordinance provisions. Located at 2952 Fairlee Dr. on approx. 20,000 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((7)) 25.

Roy Spence came forward indicating that he was retained the day prior to represent the appellant and asked the Board to defer the subject appeal to allow him adequate time to review the circumstances.

Maggie Stehman, Staff Coordinator, Zoning Administration Division, said that staff was not opposed to a deferral and suggested October 13, 1998, at 9:30 a.m.

Mr. Ribble moved to defer the subject application to October 13, 1998 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote and Ms. Gibb was absent from the meeting.

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Page 01, August 18, 1998, (Tape 1), Action Item:

Request for Intent to Defer
Golf Park Inc.
A 1997-HM-040

Chairman DiGiulian noted the request for an Intent to Defer from John Thoburn for Golf Park Inc.

William Shoup, Deputy Zoning Administrator, said staff did not support the deferral request. He said the appeal pertained to a November 12, 1997, Notice of Violation. Mr. Shoup said the deferral was requested on the basis that Mr. Thoburn filed a special permit amendment application which would address the appeal issues. He said the subject appeal had been deferred twice previously, the first time in February and again on June 16th and Mr. Thoburn had indicated on both occasions that he would be filing a special permit amendment application (SPA) within 30 days. However, the SPA application had not been filed until the afternoon of August 18, 1998. Mr. Shoup stated that because the appeal involved violations of special permit conditions and considering the lack of diligent effort to file an SPA application he requested that the hearing be held on August 25, 1998 as scheduled. He indicated that there were speakers present to speak to the deferral request and noted that Mr. Thoburn was also present.

Mr. Thoburn said the special permit amendment application had been filed. He said the major issues were resolved and the minor issues would be resolved with the special permit amendment hearing. Mr. Thoburn said they had been coordinating with the family that moved in directly down stream from the range, and that they were happy with the lighting situation. He requested that the hearing be deferred again.

Mr. Kelley asked Mr. Shoup if the Board were to hear the appeal, accept staff's recommendation, and uphold the Zoning Administrator, would there be any enforcement considering the fact that an SPA had been filed.

Mr. Shoup said normally the position would be not to pursue enforcement but because of the length of time the violation has occurred staff would have to consider whether or not to begin some enforcement activity.

He said there was no guarantee of the outcome of the SPA and because this had gone on for so long staff would want to be in the best position possible to pursue.

Mr. Kelley said he didn't see any sense in holding the hearing and nothing would be done until the SPA was heard.

Mr. Dively asked if the normal policy would be that staff would not take enforcement action until the SPA was heard. Mr. Shoup said under normal circumstances that staff would not take enforcement action.

Chairman DiGiulian called for speakers to speak to the deferral request.

Jody Bennett, Hunter Mill Defense League, said she would like to know that this hearing would be on schedule since it had been delayed since February. She said the community was quite upset that the application was constantly delayed. Ms. Bennett said on June 16th she appeared before the Board and at that time she asked how long the Board would sanction this applicant to operate under violation. She said the Board told her that they were not sanctioning the operation in violation because the Board had not heard the case to see if they were in violation. Ms. Bennett concluded by asking what would the citizens need to do to get the Board to hear the subject application.

Phillip Yauck came forward to speak against the deferral. He indicated that he was appalled by the delay of hearing and there was no justification for the delay.

Bruce Bennett and Donna Shuster also came forward to speak against the deferral. They expressed concern about the numerous deferrals and requested that the application be heard as scheduled.

Mr. Kelley said he was sick and tired of getting calls from people threatening his reappointment to the Board. He said this case had been around for years and it had not been determined that there was violation until such time as the Board made a ruling since it has been appealed. Mr. Kelley said he didn't think there was any sense in holding a hearing that may make the entire situation moot. Mr. Kelley moved to grant a deferral and asked staff for a date that would coincide with the date of the special permit amendment.

Mr. Dively asked Mr. Shoup what would be the earliest date the special permit amendment application could be heard. Mr. Shoup said the best case scenario would be early December.

Mr. Dively seconded the motion. He said he wanted the County to review the application on an expedited basis. The motion carried by a vote of 4-1 with Mr. Hammack voting nay. Mr. Pammel was not present for the vote and Ms. Gibb was absent from the meeting.

Mr. Kelley moved to request that the County officials expedite the handling of the special permit amendment application and report to the Board at the next hearing and at that time a date would be set for the hearing of the appeal and also for the special permit amendment application. Mr. Dively seconded the motion which carried by a vote 5-0. Mr. Pammel was not present for the vote and Ms. Gibb was absent from the meeting.

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Page 698 August 18, 1998, (Tape 1), Scheduled case of:

8:00 P.M. MONTESSORI SCHOOL OF FAIRFAX, INC., SP 98-Y-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit child care center, nursery school and private school of general education which has an enrollment of less than 100 students daily. Located at 3411 Lees Corner Rd. on approx. 1.85 ac. of land zoned R-1 and WS. Sully District. Tax Map 34-2 ((1)) 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. Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

Page 699, August 18, 1998, (Tape 1), MONTESSORI SCHOOL OF FAIRFAX, INC., SP 98-Y-025, continued from Page 698

proposed to establish a school of general education, nursery school and child care center. The hours of operation would be 7:00 a.m. to 6:00 p.m. with a maximum total daily enrollment not to exceed 100 children. The primary focus of the proposed facility would be the Montessori School. All issues had been addressed and staff recommended approval of the application subject the development conditions dated August 17, 1998.

Ms. Kelsey, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she had contacted the homeowners' association and the residents on Old Dairy Road had requested a deferral, but she met with them to discuss their concerns. Ms. Kelsey said the residents were most concerned about the increase in traffic created by the school. She said even before the application was filed, the engineer had checked with VDOT about the road and determined that a left and right turn lane would be needed. The applicant agreed to provide the left and right turn lane. Ms. Kelsey stated that she believed the applicant had done everything to mitigate any adverse impacts that this use might create including traffic, screening and parking. She submitted revisions to conditions #8, #9, and #11. Ms. Kelsey stated that Ms. Amiri, the applicant, was present and that she wanted to speak. Ms. Kelsey submitted photographs to the BZA.

Ms. Amiri stated that she was concerned for the children and wanted to build a school for them. She said she did not want to cause any problems for the residents.

Chairman DiGiulian called for speakers.

Ben Battle came forward to request a deferral for the community to thoroughly review the application and prepare themselves to speak in opposition.

Mary Flint came forward to speak in support of the school. She said the traffic would not be caused by the school.

Dan Terrell and Julie Roman, 13523 Old Dairy Road, came forward to speak in opposition of the application expressing concerns about the increase in traffic, the noise level, and screening. Ms. Roman submitted a petition signed by neighbors in opposition of the application.

An unidentified resident of Franklin Farm came forward to speak in support of the application. She said the school would not cause a detrimental increase in traffic. She said a study should be done on the road.

Ms. Kelsey gave a rebuttal stating that the applicant had agreed to a right and left turn lane. She said the applicant also agreed to add additional plantings for adequate screening.

Mr. Dively asked what was the current usage for the road. Ms. Kelsey replied that after discussion with the Department of Transportation, she was informed that there were 15,700 vehicle trips per day the 1995 traffic study from Route 50 to Centreville Road indicated.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the primary issue raised by the community was not one of incompatibility. He said the location was in an area where there were already public facilities which make it an ideal location, but what the community had expressed in their comments was a concern for traffic. Mr. Pammel said he shared that concern with the community. He said the basic problem was one where everyone would have to exert more influence on the Virginia Department of Transportation to focus their attention on areas such as this one. He said for too many years the State had ignored a lot of these safety problems and directed their attention only to the critical issues and that was because they didn't have the resources to do anything else. Mr. Pammel said that basically it was the public that would have to make more resources available to the State and demand that the State focus their attention on the problems of Northern Virginia.

Mr. Pammel moved to approve SP 98-Y-025 for the reasons noted in the Resolution subject to the Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MONTESSORI SCHOOL OF FAIRFAX, INC., SP 98-Y-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit child care center, nursery school and private school of general education which has an enrollment of less than 100 students daily. Located at 3411 Lees Corner Rd. on approx. 1.85 ac. of land zoned R-1 and WS. Sully District. Tax Map 34-2 ((1)) 20. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 18, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant, Montessori School of Fairfax, 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 SDE, Inc., dated April 30, 1998, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. If determined necessary by DPW&ES and VDOT, all frontage improvements and proposed turn lanes shall be completed to their satisfaction.
- 6. Prior to the issuance to the Non-Residential Use Permit, all required parking spaces shall be delineated and marked, including an accessible parking space. All parking shall be on site.
- 7. On-site stormwater management shall be to the satisfaction of DPW&ES.

- 8. Existing vegetation shall be maintained and preserved, and transitional screening and barrier requirements shall be modified in favor of the conditions shown on the Plat, subject to Development Condition Number 9.
- 9. Prior to the issuance of the Non-Residential Use Permit, the Urban Forester shall assess the proposed transitional screening for effectiveness. If deemed appropriate by the Urban Forester, supplemental plantings shall be installed in areas directed by the Urban Forester. Species and size of supplemental plantings shall be as directed by the Urban Forester.
- 10. All existing and proposed signs shall comply with Article 12 of the Fairfax County Zoning Ordinance.
- 11. The maximum total daily enrollment shall be limited to ninety-nine (99) children.
- 12. The maximum hours of operation shall be limited to 7:00 A.M. to 6:00 P.M., Monday through Friday.
- 13. Following issuance of the Non- Residential Use Permit for the child care center, nursery school and private school of general education use, no private residential use shall be permitted on the site.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be valid until this has been accomplished.

Pursuant to Section 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 26, 1998. This date shall be deemed to be the final approval date of this special permit.

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8:00 P.M. RESTON ASSOCIATION, SP 98-H-022 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit community club and tennis court. Located on Thunder Chase Dr. on approx. 3.48 ac. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 16-4 ((9))(2C) A and 16-4 ((9)) C.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry Butler, 13512 Huntsfield Court, Herndon, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a community club consisting of an outdoor recreation area with a tennis court, sand volleyball court, picnic pavilion, water feature, and a six space parking lot. The applicant proposed to provide the outdoor recreation facilities to residents of the Reston Community. The facilities would be unlit and would be used during daylight hours year round. Staff recommended approval of the application subject to the development conditions.

Mr. Butler, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said that Reston Association met with the residents and they

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agreed with the development conditions. Mr. Butler said this would be an unlighted day use facility. He said additional screening and vegetation would be preserved.

Chairman DiGiulian called for speakers.

Doreen Varblow and Jeff Rees came forward to speak in support of the application.

Carol Orth, 12707 Hitchcock Court, came forward to speak in opposition expressing concerns about the parking lot and it being a hangout for kids at night. She said she would like the parking reduced.

Mr. Butler stated in his rebuttal that there was a specific number of parking spaces required for the tennis courts.

Chairman DiGiulian asked about the parking requirement. Ms. Schilling replied that 4 spaces per tennis court is required in accordance with Article 11 of the Zoning Ordinance.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 98-H-022 for the reasons noted in the Resolution subject to the Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RESTON ASSOCIATION, SP 98-H-022 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit community club and tennis court. Located on Thunder Chase Dr. on approx. 3.48 ac. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 16-4 ((9))(2C) A and 16-4 ((9)) C. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 18, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, (3.48 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 Wiles, Mensch Corporation (Joseph P. Mensch, P.E.) dated July 10,

1998, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Landscaping shall be provided as shown on the approved special permit plat, supplemented along the north side of the tennis court and sand volleyball court with additional evergreen trees and understory plant materials subject to the review and approval of the Urban Forestry Branch of DPW and ES, and shall be deemed to fulfill the requirements of Transitional Screening Type I. Barrier requirements along all lot lines shall be waived.
6. The existing native vegetation planted on both sides of the concrete drain shall be maintained in an undisturbed state. The applicant may maintain the perpetually undisturbed open space surrounding the drainage area by hand as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining native wetlands adaptable vegetation until such time as natural secession takes over. There shall be no mowing of weeds or grass in the area east of the driveway and asphalt trail (located on the west side of the drainage area).
7. No lighting shall be permitted on-site.
8. All signs shall be provided in conformance with Article 12 of the Zoning Ordinance.
9. Hours of operation shall be from dawn to dusk.

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. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 26, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 103, August 18, 1998, (Tape 1), Scheduled case of:

8:00 P.M. CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 for church and related facilities to permit building addition and site modifications. Located at 10550 Georgetown Pk. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 1B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Murray, 690 Center Street, Suite 300, Herndon, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to construct a building addition (7,965 square feet) for additional Sunday school and child care center classrooms, support facilities and a kitchen. The applicant also requested an increase in the number of children permitted within the child care center from 30 to 40 children and to have two temporary trailers pending the completion of the addition to the church. Staff recommended approval with the implementation of the development conditions.

Mr. Murray, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said the application was in harmony with the surrounding neighborhood. Mr. Murray noted that Reverend Paul Gleason, Pastor, and Ken Silverman, Chairman of the building committee, were present to answer questions. He said the proposed building addition would provide space for community outreach programs and ongoing Sunday school programs. He said the playground area would be increased to accommodate the proposed increase in students. Mr. Murray expressed concerns with Condition #10 and #14. He said Condition #10 pertained to additional right-of-way proposed for Georgetown Pike. He said although the Comprehensive Plan for Georgetown Pike is planned for a two-lane facility, the district wide recommendation of that same document indicated that "Georgetown Pike should be maintained within its existing right-of-way." Mr. Murray referenced a Senate Document that prohibited the widening of Georgetown Pike except in cases where there were extreme safety concerns. He stated it was his belief that along the frontage of church, they did not have the all the traffic hazards as some other stretches of the Pike. Mr. Murray said with regard to Condition #14 which pertained to parking, the church was concerned about future interpretation of the condition. He said it was possible that in the future if the church were to have some minor building expansion the Board might consider a prerequisite for a minimum 93 spaces to be somehow mandated or derived from a use demand at the facility. He said the 93 spaces shown on the plat were derived from a geometric layout and not from an internal demand or use within the church facility. Mr. Murray requested removal or revision of Condition #14. He submitted suggested revisions to the conditions.

Mr. Hammack asked staff whether they objected to the suggested revisions. Ms. Schilling replied that staff had no objection to 93 parking spaces, but if 93 spaces were shown on the plat, the special permit would need to be developed in substantial conformance with the plat.

Chairman DiGiulian called for speakers.

Ken Silverman, Construction Engineer, Eleanor Anderson, Chairperson of Stuart Mendelsohn's Task Force, and Tanya Edwards Buschon, 930 Lane Mill Road, came forward to speak in support of the application. They discussed the issue of right-of-way dedication, stating that the Comprehensive Plan did not support the widening of Georgetown Pike.

Discussion ensued between Ms. Schilling and Mr. Hammack pertaining to right-of-way requirements. Ms. Schilling said the condition was not to widen the pavement of the road but to provide a shoulder to increase safety.

Mr. Hammack asked staff about the legal status of Virginia Senate Document #47, and whether it was law or a resolution. Ms. Schilling replied that she could provide that information at a later date, but that staff's memo was based on the Comprehensive Plan provisions. She said typically if a Senate document has been passed then the Comprehensive Plan would reflect that.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SPA 83-D-075-4 for the reasons noted in the Resolution.

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SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 for church and related facilities and child care center to permit building addition and site modifications. Located at 10550 Georgetown Pk. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 1B. 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 18, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The application is an appropriate use for the property.
- 3. The application has a very modest increase in square footage and in the day care enrollment.
- 4. There is no increase in the congregation.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 10550 Georgetown Pike (4.97 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Tri-Tek Engineering, (Kevin Murray, P.E.) dated April 8, 1998, as revised through July 16, 1998 and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. All parking spaces shall be paved unless a waiver of the dustless surface requirement is approved by the Department of Public Works and Environmental Services (DPW and ES). If DPW and ES approves a waiver, the gravel surface shall be maintained in accordance with the Public Facilities Manual.
- 6. Transitional Screening shall be modified as follows:
 - The existing vegetation along the northern and western lot lines shall be deemed to satisfy the

transitional screening requirement.

- Along the eastern lot line, the existing shrubs and the three evergreen trees between the proposed trailers and the eastern lot line shall be deemed to satisfy the transitional screening requirement. Supplemental landscaping shall be provided between the eastern lot line and the church, using evergreen trees and shrubs to screen the view of the addition, subject to the review and approval of the Urban Forestry Branch of DPW and ES.
 - Transitional screening along the front of the property shall consist of the plantings shown on Sheet 2 of the approved special permit plat.
7. The barrier requirement around all property boundaries shall be waived.
 8. The two trailers shall be a maximum of 12' x 60' and shall be removed from the site five (5) years from the final date of approval of the special permit amendment, or at the time of the issuance of a Non-Residential Use Permit for the addition, whichever occurs first. The trailers shall be skirted and shall meet all applicable codes.
 9. Any signs on the property shall be located in accordance with Article 12 of the Zoning Ordinance.
 10. The right-turn deceleration lane shall be retained.
 11. Any 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 maximum seating capacity of the church shall be limited to 300 seats.
 13. The maximum total daily enrollment for the child care center shall be limited to 40 children.
 14. There shall be 90 parking spaces provided while the trailers are on-site. Following the removal of the trailers, the former trailer area shall be restored to parking as shown on the special permit plat.

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. Ribble and Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 26, 1998. This date shall be deemed to be the final approval date of this special permit.

Page 101, August 18, 1998, (Tape 1), Scheduled case of:

Approval of 1999 Meeting Dates

Mr. Pammel moved to approve the 1999 Meeting dates. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

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Page 101, August 18, 1998, (Tape 1), Scheduled case of:

Approval of Revised Plat
Grace Orthodox Presbyterian Church
SPA 73-P-068

Mr. Pammel moved to approve the revised plat for the SPA 73-P-068. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

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Page 101, August 18, 1998, (Tape 1), Scheduled case of:

Approval of August 11, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:31 p.m.

Minutes by: Regina Thorn

Approved on: November 10, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 25, 1998. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Nancy Gibb; Robert Kelley; and, James Pammel. Chairman John DiGiulian and Paul Hammack were absent for the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 109, August 25, 1998, (Tape 1), Scheduled case of: 110

9:00 A.M. TRINITY ASSEMBLY OF GOD, SPA 96-Y-031 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 96-Y-031 for church and related facilities to permit site modifications. Located at 4650 Shirley Gate Rd. on approx. 12.52 ac. of land zoned R-C and WS. Sully District. Tax Map 56-4 ((1)) 17.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert C. Mereness, Agent, CAD-CON Consulting, Inc., 10706 Vandor Lane, Manassas, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to their approved special permit for a church and related facilities in order to relocate the proposed entrance road to the north. Under the previous proposed application the road was to be located on a pipestem portion of adjacent lot 18. The entrance drive and road was now proposed to be located entirely within the property of the church. When the special permit was previously approved, the applicant had obtained an option for an ingress/egress easement from the adjacent property owner to use the pipestem as part of their entrance road. Subsequent to the approval of the special permit, the applicant learned that the easement would not be granted. In staff's evaluation, there were no outstanding issues associated with this request. Staff recommended approval of the special permit amendment application subsequent to the development conditions contained in the staff report.

Mr. Mereness, the applicant's agent, stated that the applicant agreed with all of staff's conditions in the staff report.

Chairman DiGiulian called for speakers. There were no speakers in support of the application.

William Blevins, 4614 Forest Hill Drive, Fairfax, Virginia, came to the podium to speak in opposition of the application. He stated he was the guardian conservator for the owner of Parcels 18 and 3, Mr. Vaughn Blevins. He stated he "looked like the bad guy" in not granting the easement on the parcel for the ingress/egress. Mr. Vaughn Blevins, the owner of the property, had a history of dementia and other medical problems going back into the 1980's. Mr. Vaughn Blevins had recently been diagnosed with Alzheimers and other forms of dementia. He had been taken advantage of over the years, particularly from 1991 to the present. Mr. Blevins believed the church had no wrong doing; however, he did not approve of some of their techniques and the owner of the lot was taken advantage of. Mr. Blevins stated that none of the signatures by Mr. Vaughn Blevins going back into the 1990's should be honored until the proper authorities looked at them.

Mr. Dively told Mr. Blevins the purpose of the application was to review the proposed development conditions. He asked Mr. Blevins if he was opposed to the development.

Mr. Blevins stated he was neither for or against the development.

Mr. Dively stated that was the only issue being heard. Mr. Blevins stated he had other priorities.

Mr. Dively stated that it was the only thing being heard and understood there may be other issues.

Mr. Blevins stated that in Appendix 3 of the staff report, it stated that neither he nor the attorney had conveyed the easements and stated the conditions set forth long ago required land consolidation.

Mr. Dively told Mr. Blevins he was straying from the subject and that he must stick with the issues. The only

issue being heard was to amend the special permit to allow a private access road and a pipestem access. On those issues, he asked Mr. Blevins if he had anything to say.

Mr. Blevins asked how could he address these issues if this was the first he had seen of the report. He stated some of the items in the report were outright false.

Mr. Dively asked if he was talking about the proposed development conditions.

Mr. Blevins stated what was false was the reasons for not granting the easements.

Mr. Dively stated the easement was not before the Board.

Ms. Gibb stated the applicant had relocated the easement onto their property so it did not matter that it was denied.

Mr. Blevins stated the easement had to go before the Circuit Court and he could not arbitrarily say it was a condition set forth in the guardianship, it had to be approved or disapproved by the Circuit Court.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 96-Y-031 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 18, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRINITY ASSEMBLY OF GOD, SPA 96-Y-031 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 96-Y-031 for church and related facilities to permit site modifications. Located at 4650 Shirley Gate Rd. on approx. 12.52 ac. of land zoned R-C and WS. Sully District. Tax Map 56-4 ((1)) 17. 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 25, 1998; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a special permit.
3. The purpose for the application was only to replace one access road with another.
4. The church had provided dedication through its parcel to lot 18; therefore, access would not be necessary in the future.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4650 Shirley Gate Road (12.52 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Cad-Con Consulting Inc. (Frederick D. Neal P.E.) dated June 8, 1998, as revised through July 20, 1998, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be limited to a total of 640.
6. One-hundred-sixty (160) parking spaces shall be provided as shown on the special permit plat. All parking shall be on-site.
7. A right-turn deceleration lane shall be constructed into the site as required by VDOT. All off-site improvements shall be provided as shown on the special permit plat, and as determined by DPW & ES.
8. The area shown on the special permit plat to be dedicated to the Board of Supervisors for public street purposes shall be constructed with a private road and privately maintained within the public right-of-way, as shown on the approved special permit plat, until such time as a public street is constructed. The private road shall be developed to VDOT standards, as determined by DPW & ES.
9. The applicant shall provide an additional walkway which connects the church structure to the walkway adjacent to Shirley Gate Road. This additional walkway can be located adjacent to the area delineated on the Special Permit Plat for the water line into the site. Construction of the walkway shall not encroach upon any area designated as a tree save area.
10. Existing vegetation shall be preserved and maintained as indicated on the special permit plat. No clearing or grading will be permitted in this area except for the removal of dead, dying or diseased trees which shall be removed manually. No structures or utilities shall be located in this area. This buffer area shall be delineated by a visible border, such as an orange hurricane fence, throughout the entire construction period for the development.
11. Supplemental vegetation shall be provided along the eastern property line adjacent to Shirley Gate Road as shown on the special permit plat. Transitional Screening 1 shall be provided along the southern and eastern lot lines, adjacent to the proposed stormwater management pond.
12. The transitional screening requirement shall be modified along all lot lines, except for the areas described in Condition 11, to allow existing vegetation to satisfy the requirements of Transitional Screening 1.
13. The barrier requirement shall be waived along all lot lines.
14. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and Water Supply Protection Overlay District, unless waived by the Department of Public Works and Environmental Services (DPW &

ES).

- 15. A geotechnical engineering study shall be submitted to DPW & ES for review and approval in accordance with Chapter 17 of the Fairfax County Code as determined necessary by DPW & ES, and shall be implemented as determined by DPW & ES. If DPW & ES determines that a potential health risk exists due to naturally occurring asbestos, all construction personnel shall be alerted to the potential health risk and appropriate construction techniques, as determined by DPW & ES shall be implemented.
- 16. The northernmost section of Parcel 17 shall remain in an undisturbed state and shall remain undeveloped.
- 17. 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 nuisance off the property.
 - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
- 18. A sign permit shall be obtained for any sign proposed at this site.
- 19. The site shall be served by private septic fields. No request for expansion of the sewer service area or connection to public sewer shall be made; however, should Fairfax County extend sewer service into this area, the applicant may request a connection. If septic field(s) are inadequate to serve the use, the use shall be reduced to such an extent as required to ensure adequacy of the septic system.
- 20. A minimum of fifty (50) percent of the combined lot area for Parcel 17 shall remain as undisturbed open space.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. DiGiulian and Mr. Hammack were 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 August 25, 1998. This date shall be deemed to be the final approval date of this special permit.

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103 of the Zoning Ordinance to amend SP 85-S-083 for church and related facilities to permit nursery school. Located at 10125 Lakehaven Ct. on approx. 10.78 ac. of land zoned R-1. Springfield District. Tax Map 87-2 ((1)) 26.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Fontneau, Agent, 7578 Vogels Way Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a Group 3 special permit to allow a church and related facilities for a nursery school with a maximum daily enrollment of 40 children. The applicant proposed to use the 2,500 square foot area in the southwest portion of the parcel as a play area. There was no proposal for development changes at this time. Staff recommended approval of the application.

Mr. Fontneau, the applicant's agent, stated the applicant had read and agreed with the staff report development conditions and thanked staff for working with them over the past five months. The applicant was trying to get Spring Mar Pre-School operational for the beginning of the school year. Mr. Fontneau stated the issue was very simple, the applicant was requesting the special permit amendment to allow a weekday morning pre-school in the church building.

There were no speakers to speak in support or opposition of the application.

Mr. Pammel stated in the conditions, Appendix 1, development condition number 10, a driveway 30 feet from the centerline of public road shall be dedicated to the Board of Supervisors in fee simple. Mr. Pammel stated the Board of Zoning Appeals had reservations in the past regarding churches dedicating to the Board of Supervisors and asked the Board where it stood on this condition.

Mr. Fontneau replied that the right-of-way was a requirement of the application in 1985/1986 for the building of the church which occurred in 1993/1994 and released by the County in 1997. The dedication had happened and did not affect the use of the church as a pre-school.

Vice Chairman Ribble asked what was meant by it was released in 1997. Mr. Fontneau stated the bonds were released and all paperwork was completed after three years of waiting.

Mr. Pammel asked if the deceleration lane was provided. Mr. Fontneau stated the deceleration lane was constructed in the Spring of 1994.

Mr. Pammel recommended removing development condition number 10.

Vice Chairman Ribble closed the public hearing.

Mr. Dively moved to approve SPA 85-S-083-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 18, 1998.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Mr. Pammel noted there was a letter of support from the Kirkwood Presbyterian Church relating to their experience with the school and it was an excellent accommodation of their activities.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ACCOTINK UNITARIAN UNIVERSALIST CHURCH, SPA 85-S-083-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-083 for church and related facilities to permit nursery school. Located

at 10125 Lakehaven Ct. on approx. 10.78 ac. of land zoned R-1. Springfield District. Tax Map 87-2 ((1)) 26. 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 25, 1998; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a special permit.
- 3. The trip generation and traffic is modest and does not pose any problems to the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only, Accotink Unitarian Universalist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 10125 Lakehaven Court (10.78 acres) lot 26, 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 T. Barnes, Professional Engineer, dated May 29, 1992, as revised through June 8, 1998, and approved with this application, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The seating capacity of the main worship area shall not exceed 200.
- 6. There shall be a minimum of 51 parking spaces, including four (4) handicapped spaces. All parking shall be on site as depicted on the special permit plat.
- 7. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the rear and northern property lines. In the area adjacent to Lot 27 on the southern boundary, existing vegetation shall be supplemented, if necessary, to provide screening equivalent to Transitional Screening 1. On the front property line, a twenty-five (25) foot planting strip shall be required to adequately screen the church parking area from residential properties across Pohick Road. The degree and nature of required plantings shall be determined by the County Urban Forester. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined above.

8. The applicant shall work with the County Urban Forester to determine the boundaries for tree clearance before approval of a building permit or undertaking any site clearance or construction activity. Existing trees shall be preserved except where removal is necessary to accommodate construction.
9. Interior parking lot landscaping shall be provided in accordance with Article 13.
10. The entrance to the site shall be designed to provide adequate site distance as required by VDOT.
11. Pursuant to the Virginia Code Section of 10.1-700 et seq. at the time of the site plan review, an Open Space Easement to the Board of Supervisors shall be recorded among the land records of Fairfax County. The easement shall run with the life of this Special Permit. The easement shall include a strip of land 150 feet wide, centered on Oppossum Branch Stream, and extending across the width of the property. The exact location of the boundary shall be determined at the time of the site plan review by the DPW & ES in coordination with DPZ. There shall be no clearing of any vegetation within this area, except for dead and dying trees and a pedestrian bridge and trail to and from it which shall be located within this easement.
12. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
13. Erosion and sediment controls conforming to the policies, guidelines and specifications contained in Article 11 of the Public Facilities Manual, Chapter 104 of the County Code, and the Virginia Erosion and Sediment Control Handbook shall be required.
14. Best Management Practices (BMP) designed to protect the Burke Lake watersheds as determined by the Director of DPW & ES shall be provided.
15. Should future access from Pohick Road to new Burke Lake Road be constructed as currently proposed along the property's northern boundary, transitional screening yards shall be provided outside the dedicated area and the grading and construction easements, as previously outlined in the above Development Condition # 7. Existing vegetation shall be deemed to satisfy the transitional screening requirement.
16. The total maximum daily enrollment for the nursery school shall be 40 children.
17. The maximum number of employees for the nursery school shall be 10.
18. The maximum hours of operation for the nursery school shall be limited to 9:15 a.m. to 1:30 p.m. Monday through Friday.
19. Prior to approval of a Non-Residential Use Permit for the Nursery school for 40 children, a reduction in parking shall be approved, as determined by the Zoning Permit Review Branch, DPZ, and the Department of Public Works and Environmental Services, for shared use of the parking lot by the church and nursery school based on respective hourly parking accumulation characteristics. If a parking reduction is not approved, the number of seats in the church and/or the number of children in the nursery school shall be reduced to a number that can be supported by the parking spaces provided on the site as determined by DPW & ES.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify

the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. DiGiulian and Mr. Hammack were 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 August 25, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 116 August 25, 1998, (Tape 1), Scheduled case of:

9:30 A.M. JOHN S. SORRELL, A 1998-SU-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected a 6.0 ft. tall fence in the front yard, is parking two commercial vehicles on the property, and has erected an accessory storage structure in the front yard of a lot which is less than 36,000 sq. ft., all in violation of Zoning Ordinance provisions. Located at 5419 Sasher Ln. on approx. 0.5 ac. of land zoned R-C. Sully District. Tax Map 67-1 ((1)) 8. (Concurrent with A 1998-SU-007). (DEFERRED FROM 6/30/98).

9:30 A.M. JOHN S. SORRELL, A 1998-SU-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected three accessory storage structures and a 6.0 ft. tall fence on the property, all in violation of Zoning Ordinance provisions. Located at 12224 Braddock Rd. on approx. 0.49 ac. of land zoned R-C. Sully District. Tax Map 67-1 ((1)) 5. (Concurrent with A 1998-SU-006). (DEFERRED FROM 6/30/98).

Vice Chairman Ribble questioned staff regarding the notices not being in order.

Mr. Kelley asked staff if the applicant was notified that if notices were not in order the case would be dismissed.

Daryl Varney, Assistant to the Zoning Administrator, stated the applicant had requested a deferral; therefore, they were admonished at that time. Mr. Varney gave updated photographs of the property to the Board for their review.

Ms. Gibb questioned what was deficient with the notices.

Mr. Varney replied staff did not receive anything on the notices from the applicant which would indicate the notices were not sent.

Mr. Dively asked how recent the photographs were.

Mr. Varney stated the photographs were taken on August 13, 1998 and stated he had visited the site on August 24, 1998 and it essentially looked the same.

Mr. Dively asked if Mr. Sorrell was currently represented by council.

Mr. Pammel stated that Mr. Armstrong represented Mr. Sorrell and indicated he would be advising him and requested the deferral which the Board granted and stated he obviously did not intend to do anything further.

Mr. Dively made a motion to dismiss both appeals. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting. Due to the action taken on this application was prior to the 9:30 a.m. scheduled public hearing time, additional action was taken later in the Board meeting.

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9:30 A.M. HUNTER MILL EAST, LLC, JINDO & YOUNGHEE KIM, A 1997-HM-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants have established uses authorized by SPA 91-C-070-2 without a Non-Residential Use Permit (Non-RUP), and that the uses are not in compliance with Special Permit Conditions 7, 9, 16 and 20, all in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.29 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, and 5. (RESCHEDULED FROM 3/10/98; DEFERRED FROM 7/7/98).

Mr. Pammel stated the Board had indicated the prior week the case would be deferred. The Board granted an intent to defer the prior week on this case.

Mr. Kelley stated it was left open so that a date could be scheduled at the earliest possible time to hear the appeal and a special permit amendment on the same date. Mr. Kelley stated the Board could not schedule a new date at this time.

Susan Langdon, Chief, Special Permit and Variance Branch, stated with regard to the special permit amendment submission, the application was submitted on Tuesday, August 18, 1998, and the Application Review Branch took this application out-of-turn and reviewed it; however, on August 24, 1998, the application did not meet the submission requirements required for the acceptance of the application and the Application Review Branch sent the applicant a deficiency memo. She stated there were several minor deficiencies with the plat which the applicant needed to correct. At this point, staff had not heard back from the applicant so his intentions were unknown.

Mr. Kelley moved to defer the application to the next meeting. Mr. Kelley asked staff if once these minor deficiencies were cleared up could a hearing be set.

Vice Chairman Ribble asked if the deficiencies were only with the plat.

Ms. Langdon stated to her understanding it was structures on the site that had not been shown on the plat. Staff had asked the applicant to address these issues.

Mr. Dively stated if the Board did continue, the applicant would have to be notified to inform him that this issue had been continued for two weeks and staff was waiting for his response.

Mr. Pammel stated he believed Mr. Thoburn had used the Board to delay as long as possible this particular case. He had waited until the eleventh hour to do the special permit and now needed more time. Mr. Pammel hoped the Board moved forth and took appropriate action on the special permit and appeal and that no further deferrals were granted.

Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting. Consideration on setting a date for the appeal was continued to September 8, 1998 at 9:30 a.m.

Due to the action taken on this application was prior to the 9:30 a.m. scheduled public hearing time, additional action was taken later in the Board meeting.

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Ms. Langdon asked Vice Chairman Ribble if the Board would like to waive the eight day waiting period for the two previous applications due to the Board not meeting on September 1, 1998. Mr. Dively made the motion to waive the eight day waiting period. Ms. Gibb seconded the motion which carried by a vote of a 5-0. Mr. DiGiulian and Mr. Hammack were absent from the meeting.

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Mr. Pammel moved to approve the Minutes. Mr. Dively 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 718, August 25, 1998, (Tape 1), After Agenda Item:

Approval of August 18, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb 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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Mr. Dively noted to the Board that Mr. Shoup had come into the auditorium noting that the Board had already moved on the two appeal applications; however, they were scheduled for 9:30 a.m. He recommended to the Board they wait until 9:30 due to the fact the cases were addressed prior to the scheduled time.

At 9:28 a.m., Vice Chairman Ribble recessed for two minutes.

Vice Chairman Ribble reconvened the meeting at 9:30 a.m.

Mr. Dively moved to reopen the hearing. Ms. Gibb 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 718, August 25, 1998, (Tape 1), Scheduled case of:

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Vice Chairman Ribble called the appellant to the podium. He asked Mr. Sorrell why the notices were not in order again.

Mr. Sorrell stated he was not sure. His attorney was supposed to be present and he had not been able to reach him. Mr. Sorrell's attorney entered the Board Auditorium.

Stephen A. Armstrong, the appellant's agent, came to the podium and stated there had been substantial progress made on the application property. Mr. Armstrong stated in most cases the Board would only allow for one continuance; however, requested the Board grant one months' additional time to complete the job. It was a substantial undertaking on two lots.

Vice Chairman Ribble told Mr. Armstrong the problem was the notices were not in order. He questioned if the notices were sent out.

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Mr. Armstrong stated he had assumed that when the notices were sent the first time, if anyone was interested, they would come and hear the case was continued.

Mr. Varney stated the notices were deficient the first time.

Mr. Armstrong stated they were only deficient in one person, because one person had two lots and therefore only nine were notified.

Mr. Varney stated only eight different property owners were notified the first time.

Mr. Armstrong stated nothing was sent out the second time and took responsibility of this oversight.

Vice Chairman Ribble stated he had thought the Board had made it clear that notices had to be done at the last meeting when they deferred the case and stated staff had reiterated that fact.

Mr. Varney noted the appellant had made promises at that time they were going to attempt to clean up the property. He stated they had made minimal progress, however, he disagreed that it was substantial progress. A few of the inoperable vehicles were removed from the lot, no other progress could be seen besides this.

Ms. Gibb told Mr. Armstrong the matter of sending the notices is a matter of statute and is in the instruction package. They were not in order the first time and the client benefits by not complying with the Ordinance due to the continued delays. Ms. Gibb stated she did not know what the property looked like before, however, it definitely could not be heard due to the notices not being in order. It was pointed out that notification requires ten different property owners, not just ten adjoining.

Mr. Armstrong stated this was his fault and there was no excuse. He told the Board he would find a crew to assist his client in cleaning up his property. Past the legal side there was an equitable side, and Mr. Armstrong and his client understand the objective was to get the property in order.

Mr. Dively asked staff if the hearing was to be set to another date, what would the next available date be.

Ms. Langdon stated October 20, 1998, was the first open night meeting available or the next open day meeting would be October 27, 1998.

Vice Chairman Ribble asked if there was anyone to speak to the application.

Mr. Dively asked since there was no one else interested in this matter appearing, he asked staff if there had been any interest by neighbors or the community.

Mr. Varney stated, to his knowledge, there had not been.

Vice Chairman Ribble stated the notices must go out and in order.

Mr. Dively asked Mr. Armstrong if he was with the case at the very beginning.

Mr. Varney replied Mr. Armstrong filed the appeal.

Mr. Pammel stated he believed Mr. Armstrong had basically admitted before the Board that his client was at fault and had a storage yard. He believed it to be unlikely the Board would overrule the position of the Zoning Administrator in this violation. It would not be necessary to bring this matter back to the Board. The Board should move to dismiss and the County would oversee the cleaning up of the property.

Mr. Pammel made a motion to dismiss the appeal application. Ms. Gibb seconded the motion.

Mr. Dively stated he was against the motion and there would be no harm done in continuing the situation.

Mr. Kelley agreed with Mr. Dively recalling a case a few weeks prior where there had been several deferrals

Page 120 August 25, 1998, (Tape 1), JOHN S. SORRELL, A 1998-SU-006 and A 1998-SU-007,
continued from Page 119

with a similar type of issue which was finally cleaned up so much so the Zoning Administrator was overruled on certain items involved. In the first appeal the Zoning Administrator would have been upheld; however, Mr. Kelley stated he was willing to see the property cleaned up.

Mr. Pammel responded stating there were two issues, the storage of junk and a 7-foot high fence in the front yard which clearly violates the Zoning Ordinance and he didn't believe the Zoning Administrator would be overruled in either one of these two issues.

Mr. Dively stated whether that was true or not, these items were not to be prejudged, the appellant had the right to make the argument. However, the argument could not be made due to the notices not being in order.

The motion failed for a lack of 4 votes.

Vice Chairman Ribble made a motion to defer the application to October 20, 1998 at 8:00 p.m. Mr. Dively and Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Vice Chairman Ribble stressed to Mr. Armstrong the notices must be in order for the October 20, 1998 public hearing. Mr. Armstrong thanked the Board.

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Vice Chairman Ribble reopened the appeal application.

Mr. Kelley stated the issue was to have a special permit amendment filed which would be set for a public hearing at the same time of the appeal. At the previous meeting, the application was deferred to find a date in which both applications could be heard. According to staff the special permit amendment application was deficient.

Vice Chairman Ribble asked if there was anyone to speak to the appeal.

John Karens, 10300 Brittenford Drive, Vienna, Virginia, Hunter Mill Estates Subdivision, came to the podium and asked the Board what had happened. In speaking with County staff, Mr. Karens asked the Board if the violations of the appeal would be overcome by an amendment to the special use permit.

Vice Chairman Ribble stated some of the violations had been cleared up and the Board proposed to set a date to hear the applications.

Mr. Karens asked if there was an application to amend the permit.

Mr. Kelley stated it had not been accepted yet due to it being deficient.

Mr. Karens asked for the persons name of who would be handling the application once accepted.

Ms. Langdon stated that due to the fact the special permit amendment had not been accepted, a staff coordinator had not been assigned.

Vice Chairman Ribble told Mr. Karens to keep in touch with Ms. Langdon and she would keep him informed.

Mr. Kelley made a motion to carry over the deferral to the September 8, 1998, meeting hoping the special permit amendment application would be accepted. Mr. Dively 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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As there was no other business to come before the Board, the meeting was adjourned at 9:45 a.m.

Minutes by: Deborah Hedrick

Approved on: November 10, 1998

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals